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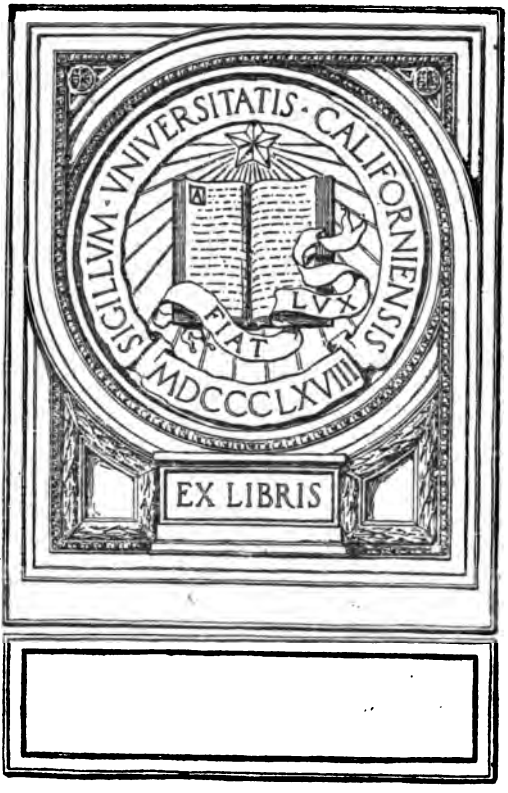
THE WISCONSIN IDEA

CHARLES McCARTHY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THE WISCONSIN IDEA

BY

CHARLES McCARTHY

CHIEF, WISCONSIN LEGISLATIVE REFERENCE DEPARTMENT

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To

THE HARD-HANDED MEN WHO BROKE THE PRAIRIE, HEWED THE FORESTS, MADE THE ROADS AND BRIDGES, AND BUILT LITTLE HOMES IN THE WILDERNESS.

TO THE NORSE LUMBERJACK AND THE "FORTY-EIGHT" GERMAN AND THE MEN OF THE "IRON BRIGADE," AND ALL TOILERS WHO, BY THEIR SWEAT, MADE POSSIBLE OUR SCHOOLS, A GREAT UNIVERSITY, AND ALL THE GOOD THAT IS WITH US.

TO THE LEGISLATORS, ALWAYS CRITICISED AND NEVER PRAISED.

"THEY THAT DIG FOUNDATIONS DEEP,
FIT FOR REALMS TO RISE UPON,
LITTLE HONOR DO THEY REAP,
OF THEIR GENERATION."

KIPLING.

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INTRODUCTION

THANKS to the movement for genuinely democratic popular government which Senator La Follette led to overwhelming victory in Wisconsin, that state has become literally a laboratory for wise experimental legislation aiming to secure the social and political betterment of the people as a whole. Nothing is easier than to demand, on the stump, or in essays and editorials, the abolition of injustice and the securing to each man of his rights. But actually to accomplish practical and effective work along the line of such utterances is so hard that the average public man, and average public writer, have not even attempted it; and unfortunately too many of the men in public life who have seemed to attempt it have contented themselves with enacting legislation which, just because it made believe to do so much, in reality accomplished very little.

But in Wisconsin there has been a successful effort to redeem the promises by performances, and to reduce theories into practice. In consequence legislative leaders and reformers pushing legislation in other states write by the hundred to the men in power in Wisconsin asking for information on what has been done. Mr. McCarthy, the chief of the Legislative Reference Library of the Free Library Commission, has written this book primarily to answer such inquiries. His purpose is to

make the book of real service to good government, and this purpose, in my judgment, he has admirably fulfilled. It is a well reasoned and thoughtful exposition of how sane radicalism can be successfully applied in practice. His writings have nothing whatever in common with the mere hysterics out of which some well meaning, but not very efficient, radicals seem to get such curious mental satisfaction. Mr. McCarthy not only shows how Wisconsin has proceeded in specific instances to accomplish specific results, but he has so interwoven his studies of those separate results as to make the volume into a connected whole. Through his account of actual accomplishment in the field of political and industrial reform in Wisconsin, there runs a strain of philosophy that it would be well for every practical reformer to master. As Professor Simon N. Patten says: "Without means of attainment and measures of result an ideal becomes meaningless. The real idealist is a pragmatist and an economist. He demands measurable results and reaches them by means made available by economic efficiency. Only in this way is social progress possible." Mr. McCarthy's purpose is to impress not only every real reformer, but every capable politician, with the fact that the people are more concerned about "good works" than about "faith."

The Wisconsin reformers have accomplished the extraordinary results for which the whole nation owes them so much, primarily because they have not confined themselves to dreaming dreams and then to talking about them. They have had power to see the vision, of course; if they did not have in them the possibility

of seeing visions, they could accomplish nothing; but they have tried to make their ideals realizable, and then they have tried, with an extraordinary measure of success, actually to realize them. As soon as they decided that a certain object was desirable they at once set to work practically to study how to develop the constructive machinery through which it could be achieved. This is not an easy attitude to maintain. Yet every true reformer must maintain it. The true reformer must ever work in the spirit, and with the purpose, of that greatest of all democratic reformers, Abraham Lincoln. Therefore he must make up his mind that like Abraham Lincoln he will be assailed on the one side by the reactionary, and on the other by that type of bubble reformer who is only anxious to go to extremes, and who always gets angry when he is asked what practical results he can show. Mr. McCarthy emphasizes the lesson that cheap clap-trap does not pay, and that the true reformer must study hard and work patiently.

Moreover, Mr. McCarthy deserves especial praise for realizing that there is no one patent remedy for getting universal reform. He shows that a real reform movement must have many lines of development. Reformers, if they are to do well, must look both backward and forward; must be bold and yet must exercise prudence and caution in all they do. They must never fear to advance, and yet they must carefully plan how to advance, before they make the effort. They must carefully plan how and what they are to construct before they tear down what exists. The people must be given full power to make their action effective, and at the

same time the educational institutions of the commonwealth must be built up in such shape as to give the people the opportunity to learn how to use their power wisely. Nor must political reform stand by itself. It must accompany economic reform; and economic reform must have a twofold object; first to increase general prosperity, because unless there is such general prosperity no one will be well off; and, second, to secure a fair distribution of this prosperity, so that the man of the people shall share in it.

In short, this is a book which in my judgment every reformer, just at this time, should have in his hands. All through the Union we need to learn the Wisconsin lesson of scientific popular self-help, and of patient care in radical legislation. The American people have made up their minds that there is to be a change for the better in their political, their social, and their economic conditions; and the prime need of the present day is practically to develop the new machinery necessary for this new task. It is no easy matter actually to insure, instead of merely talking about, a measurable equality of opportunity for all men. It is no easy matter to make this Republic genuinely an industrial as well as a political democracy. It is no easy matter to secure justice for those who in the past have not received it, and at the same time to see that no injustice is meted out to others in the process. It is no easy matter to keep the balance level and make it evident that we have set our faces like flint against seeing this government turned into either government by a plutocracy, or government by a mob. It is no easy matter to give the public their

proper control over corporations and big business, and yet to prevent abuse of that control. Wisconsin has achieved a really remarkable success along each and every one of those lines of difficult endeavor. It is a great feat, which deserves in all its details the careful study of every true reformer; and Mr. McCarthy in this volume makes such study possible.

THEODORE ROOSEVELT.

PREFACE

In my capacity as legislative librarian for over ten years in the state of Wisconsin, I have been constantly in touch with the legislation of this state, which now seems to be attracting some little attention throughout the country. The legislative reference department has been besieged by newspaper writers who come here to use the files and records. The recent magazines have contained considerable literature relating to the constructive nature of this legislation. Every day this department is called upon to answer many questions concerning particular laws or underlying principles. Our time has been taken up to such an extent that it has been deemed wise, after a great deal of deliberation and perplexity as to what should be done with the increasing volume of correspondence, to set down a few notes about these laws, and the philosophy upon which they are built as I see it. In doing so I am aware of my limitations. I have done the work hurriedly, without due care as to literary standards. Also, I have been handicapped to some degree because I have been working in this department for the legislators and have taken no part in active politics.

In the actual toil and drudgery of the legislative session — in a clerical capacity — I have tried gladly to carry out the will of the men of genius and power who

composed the Wisconsin legislature. Working under the direction of the legislature, a large part of this legislation, indeed the principal part of it, was constructed in some connection with the department of which I have been chief. Because of my duties as librarian of the legislative reference department and as a member of the faculty of the University of Wisconsin, I can say truly that I have had opportunities to see events in this state perhaps from a different standpoint than any other man. If I show a certain spirit now and then which may seem to cloud my judgment as to certain matters herein contained, I crave the reader's pardon on the score that I, a wandering student, seeking knowledge, came knocking at the gates of the great University of Wisconsin, and it took me in, filled me with inspiration, and when I left its doors the kindly people of the state stretched out welcoming hands and gave me a man's work to do.

Without the collaboration of my assistant, Miss Ono Mary Imhoff, these rough notes could not have been put together. She has also prepared the short bibliography which may be found in the Appendix and which will show the inquirer how and where to obtain particular laws or documents.

TABLE OF CONTENTS

PAGE

INTRODUCTION vii

PREFACE xiii

CHAPTER I

THE REASON FOR IT 1

CHAPTER II

THE SOIL 19

CHAPTER III

THE REGULATION OF BUSINESS AFFECTED BY A PUBLIC INTEREST 34

CHAPTER IV

ELECTORAL AND GOVERNMENTAL CHANGES . . . 88

CHAPTER V

EDUCATIONAL LEGISLATION 124

CHAPTER VI

LABOR, HEALTH, AND PUBLIC WELFARE 156

CHAPTER VII

PAGE

ADMINISTRATION 172

CHAPTER VIII

THE LEGISLATURE 194

CHAPTER IX

THE LAW AND ECONOMIC PROGRESS 233

CHAPTER X

INDEX 319

THE WISCONSIN IDEA

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THE WISCONSIN IDEA

CHAPTER I

THE REASON FOR IT

THE reason for the Wisconsin legislative program is not hard to find. There is really but one cause and it presents but one problem, which is basic to all others, and no advancement of human welfare or progress of civilization can take place until a solution is found.

The problem is one with which the whole American people is grappling. It presents no particular mystery nor is it difficult to understand.

Take up any newspaper. What are the headlines? —— Monopoly — Trusts — Trusts and the tariff — High cost of living — Predatory wealth.

Pick up a President's message. Can there be any doubt about it? Always the same — something strong and oppressive, almost unreachable, in some way entangled with courts, lawyers and litigation — always having the power to attain its object — always possessing FORCE.

Force? How can these things have Force? Have they armies, guns or the attributes of those who usually possess force? If not, how can they oppress?

Suppose when you went to buy food the man who had it asked you ten dollars when it was worth only one, and

putting a gun at your head made you give him the other nine dollars. Would the contracting parties be on equal footing? One of the parties added Force to the contract to make it favorable to him. Suppose he did not make use of the gun and yet you could not buy the food from any other man, because he had a monopoly and you would be obliged to give him the other nine dollars. Would he not be doing the same thing, adding force to contract? The only difference is that one time he used a gun and the other time monopoly. Wealth would concentrate quickly in your community, would it not — and Force also?

Suppose that this condition existed almost universally and that certain people possessed natural monopoly in oil, iron, coal and the necessities of life, and others possessed artificial monopoly in franchises, transportation facilities, patents, etc., — is there any doubt that the problem is the same, and the cause of it — *unequal conditions of contract?*

The remedy? It is easy to say "equalize the conditions between these two," but how can it be done? Everything in life is unequal but it is inequality that makes men strive. Can you put a penalty on sturdiness, intelligence or efficiency? How big must be the force and how great the inequality? A herd philosophy of absolute equality is foreign to our genius.

A remedy based upon a philosophy of "the weak to live and the strong to die" obviously cannot serve our pur-

pose. History and the common experience of life teach us that adversity has its place in the success of a nation. A man, a plant or a nation cannot be kept in a molly-coddle stage and develop true virility. Pain and strong winds are the friends of nations, as of men.

The moment we begin to equalize the conditions of men we are on dangerous ground. The fierce fight of competition must remain; the adventurous spirit in fearless attack against great odds is the very soul of the spirit of our people.

Civilization has not arisen under the hot sun where nature seems too kind. It has its chief seat where the elements and the stubborn soil force men to use their might; and sheer necessity makes great men and great countries; but again too much ice and snow stunts life and ambition; the Esquimaux builds nothing but a snow hut. A temperate zone in business, in which men may live, work and develop the best that is in them for themselves and for all, must be created and carefully protected. There is a limit to free play. As John Stuart Mill said:—

"Energy and self-dependence are, however, liable to be impaired by the absence of help, as well as by its excess. It is even more fatal to exertion to have no hope of succeeding by it than to be assured of succeeding without it."

But can a legislature, even if it were perfect, justly say whether gas should be ninety or ninety-five cents?

During a crowded legislative session how can it determine and put into law a schedule of prices for oil and coal or of railroad rates? Even if this were possible, are we not basing all on the presumption that the legislature is willing and ready to do our will? It is not so simple as this; as an editorial in the *Chicago Tribune*, commenting on recent events in the state of Illinois, expresses it:—

"Before the corporation robber can be suppressed it will be necessary to suppress the corporation incendiary who supports him and the political jackpotter who plays into the hands of both."

It is not so easy to get regulation from the legislature as it may seem. The people who possess Force use it in this connection as freely as they use it elsewhere, and the legislative machinery is not yet so complete that it always follows the wishes of the people.

The judges? Can we turn to them? Well, the Man in the Street looks dubious when you ask him. This matter of contract in relation to monopoly has somehow been strangely muddled in the courts; we are still looking in vain for any real relief from that quarter. The truth is, that the judges are like the legislators; even if they are clear-brained and brave enough, how can they fix the price of gas at ninety instead of ninety-five cents? What means have they for studying carefully every cog in the great machinery of commerce? They were not constituted for this duty, and as umpires can scarcely assume

control of a legislative and administrative problem. Americans do not want their judges to be legislators.

Yet a frenzy of judicial remedy seems to have seized us. We have all selected our favorite "trust busters," and the newspapers are full of stories of the deeds of these mighty men. The street corner orator yells "Bust them," "Dissolve them," "Imprison them."

Professor R. T. Ely, in his book on trusts, quotes newspaper headings of twenty years ago as follows:—

"Black Eye for the Trusts — Important Decision handed down in Chicago."

"The Standard Oil Trust has resolved upon dissolution."

"Pools are hit Hard — United States Supreme Court Upholds Sherman Act — Decision is a Surprise — Virtually Declares all Traffic Agreements Illegal — Competition will be Open — Managers greatly Concerned."

"Trusts in a Panic — Tobacco Combine Makes the First Important Surrender, etc."

"Trusts Busted — Far-reaching Effects of the Supreme Court Decision."

Familiar friends these, are they not?

As Professor Ely says:—

"Comment on these utterances of the press is scarcely necessary to-day. If there is any serious student of our economic life who believes that anything substantial has been gained by all the laws passed against trusts, by all the newspaper editorials which have thus far been penned, by all the sermons which have been preached against them, by all the speeches of politicians denounc-

ing them, this authority has yet to be heard from. Forms and names have been changed in some instances, but the dreaded work of vast aggregation of capital has gone on practically as heretofore. The writer does not hesitate to affirm it as his opinion that efforts along lines which have been followed in the past will be equally fruitless in the future."

But the man who has FORCE is the employer of men and women. Little homes and villages and the happiness of thousands depend upon him. After all, he is in our midst; he is a part of us and we cannot "tear him to pieces," "dissolve him," or "bust him." Would stopping the railroad or closing the electric light plant be of any benefit to us? The remedy must be complex and varied. The evils considered here are as old as the world and inherent wherever human frailty meets human strength. They are involved in every human attribute, and no rule of thumb or cut and dried theory can affect them wholly or completely.

However, there is a difference between a mountain and a molehill, and the great and glaring wrongs can be righted. Relieve the individual from even a little unjust force and he will do the rest. As long as he knows how to fight, is not complacent, nor overwhelmingly handicapped, the result will never be in doubt.

No plan can be made which will be successful, even temporarily, unless we probe for sound basic ideas. If this problem of concentrated wealth and power is world wide and world old, let us try to view it in its right rela-

tions, in order that our plan for the future may not topple over because its base is not sufficiently broad.

Every schoolboy knows that nations apparently have a childhood, a strong youth and a gradual coming of age and decay. In the youthful period, caste and wealth are not prominent. The fighting man of a Saxon horde or a Daniel Boone is respected and self-sufficient. A man is rated as a man. After a tribe has been settled for a hundred years, we find that a few seem to be in the lead, having land, wealth and power, while others seem to be gradually drifting downward in the scale. Finally, a few hundred years later, we find conditions such as exist in Russia, with concentrated wealth, caste and power on one hand and extreme poverty on the other. As John Boyle O'Reilly once said:—

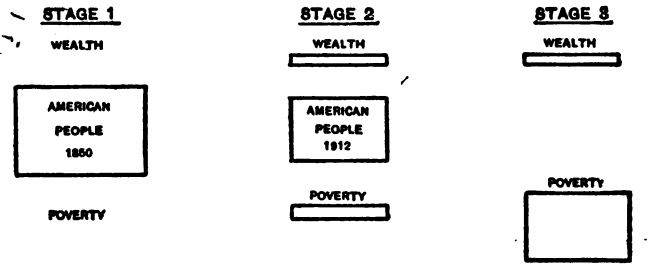
"A small class in every country has taken possession of property and government, and makes laws for its own safety and the security of its plunder, educating the masses, generation after generation into the belief that this condition is the natural order and the law of God. By long training and submission the people everywhere have come to regard the assumption of the rulers and owners as the law of right and common sense, and their own blind instincts, which tell them that all men ought to have a plenteous living on this rich earth, as the promptings of evil and disorder."

If this has been the course of history, are there not lessons to be learned? Is there not some way of keeping history from repeating itself? Is there not some means by which

we can maintain the youth of the nation, keep poverty at a minimum, and wealth, caste and privilege from commanding, conquering and finally destroying the nation?

Let us look at this crude diagram. Perhaps it will show how far-reaching the remedy must be.

In the diagram to the left, marked Stage 1, you will notice the word Wealth at the top and the word Poverty



at the bottom; between these two extremes is a square representing the American people in 1850. It represents a time in America when the great monopolies had not been formed; when Force in contract did not exist to the extent that it does to-day; there was plenty, and it was not necessary to use force. Was there not free land, oil, minerals, etc.? Wherein lay the advantage of monopoly?

To the right of this is Stage 2, which is intended to represent conditions in 1912. A small rectangle will be seen directly under the heading Wealth. This shows the change that has taken place. One per cent of the

people now possess over fifty per cent of the wealth. Yet the strong, independent American spirit is still evident in the class represented halfway between Wealth and Poverty; notice the other small rectangle at the bottom — the very poor. Does any one maintain that this picture is untrue? Some might consider the rectangle representing the very poor too small, but for our purpose — to illustrate the basic conditions of society in relation to the Wisconsin idea — it will serve very well.

On the extreme right is Stage 3. It needs no comment. The sad history of many a country can be pictured by that little diagram because concentrated wealth means power, caste, privilege, corruption and decay of every ideal, whether of manhood, morals or patriotism. Are not the crumbled remains of what were once prosperous cities scattered in the waste places of the earth sufficient proof of all this? We need not exaggerate this picture, and we cannot.

With these diagrams before us the question with which we are concerned is, are we following the same path? Will the slow grind of a hundred years or more lead to the inevitable decay which seems to come to all nations? Are the seeds sown and the causes for decay already with us? Are the corrupting influences of the concentrated wealth of to-day to continue, adding force to force while government and individuals are swept

under, until Stage 3 comes into existence? Since the American revolution, throughout the world, and particularly in Europe, there has been such an advance in the science of government and economics, in education and general intelligence, that we are tempted to hope that history may not repeat itself. If that hope is justified, it will be due to the new economic philosophy everywhere guiding the lives of men and nations in the old countries.

When one sees Germany, once a country of poor peasants, shot over by every conquering swashbuckler, transformed by the might of intelligence, noble philosophy and keen foresight into a shining example for the rest of the world, we feel certain that our own country cannot long remain indifferent. The world is being aroused by her enthusiasm. England with her crowded cities — poverty and discontent stalking everywhere — is profiting by Germany's experience, and, guided by her wise Chancellor Lloyd George, is determined to use similar devices to obtain the same results.

While in America Stage 2 has been gradually approaching Stage 3, in Germany, Stage 3 of one hundred and fifty years ago has gradually approached Stage 2 — yes, even Stage 1.

Let us consider one of the ancient cities now deserted and buried. It was, after all, a beehive, and the cause of its decay was a very simple one — the drones shirked

while the workers bore the burdens; the drones increased and the workers bore more burdens, and so it continued until the workers could bear no more; they became dulled, disheartened and discontented, and the pauper and the proletariat appeared. The drones would do no work, and soon the whole structure came tumbling down, to lie covered with the sands of the desert. Selfish power, bad government and oppression brought about its ruin. Why? Because men forgot that prosperity exists for the *benefit of the human being and for no other purpose.* If prosperity does not uplift the mass of human beings, it is not true prosperity, however it may be counterfeited by a grand show of fair cities or the glories of its riches.

Indeed, if there is a magnificent building built in any city which is not, either directly or indirectly, for the purpose of improving the opportunities and increasing the happiness of all the manhood of the country, it is built for no purpose, and were better not in existence.

This the German knows. This the American, secure still in the mighty phrases of the Declaration of Independence, glorying in the tarnished grandeur of the Constitution, boasting of his riches and the power and might of his material things, has not yet discovered.

Our civilization, with its wealth and prosperity, must be made to exist for its true purposes — the betterment, the efficiency and the welfare of each individual. The

Germans have shown us the way; we need not adopt all their methods, but we will do well to accept their philosophy, for there is no patent on it. America must cope with this new devastating influence of wealth sanely and successfully so that greater prosperity and more equitable distribution of its benefits under just laws will result.

A German prince of the olden time awoke one morning and found that he had no money. He sent for his treasurer, who, in answer to his demand, declared that there was none, that war, robbery, famine and injustice had done their work too well. Alarmed by this reply the prince asked the treasurer what could be done about it, to which he replied: "My lord, we cannot collect taxes unless the farms produce; the farms will not produce unless the farmer works them intelligently; he cannot do that unless he receives a fair profit, protection and an opportunity to live like a man rather than a beast. Give me a portion of the realm; let me keep peace and do justice, and the farmer will produce more and will pay you more taxes." The prince was convinced and gave him what he asked. The treasurer drove out the cheating rascals who had acted as judges; he punished the drunken soldier; he protected the weak against the strong; he imprisoned the usurer and dismissed the tax farmer; he provided markets and exchanges which were honest; he invested heavily in

roads and bridges; but best of all he taught the MAN. He made a better man, a more efficient machine; he taught him how to be a better farmer; in short, he did what our efficiency expert, Mr. Taylor, does to-day in a great factory. To accomplish this he did not hesitate because of expense, yet the investment was good, and after a time the prince received more taxes while more happiness and prosperity came into the land.

This story and that of the ruined city are one, and the problem they reveal is our problem. It is possible that their solution may be ours. With all these digressions in mind, let us return to our diagram. Let us consider the problems which would confront a business efficiency expert. Let us suppose that we are working with him and put down the questions which come to our minds. They may help us in reaching a solution.

How did Stage 1 become Stage 2? To find this out we must consider what is represented by the thin line beneath wealth.

Who are our richest men? Are they not the men who have made use of that Force in contract which comes from monopoly, artificial or natural? The long list of oil magnates, railroad kings, etc., certainly seems to prove it.

Could they have won without Force? Perhaps the strong and intelligent might have done so — very slowly, to be sure — but the concentration of wealth would not have been so great.

Are there not bankers, members of the stock exchanges and middlemen? Yes, but are they not all entangled with Force? Do they not manipulate that mysterious Force in contract? Are not the powers of credit and monopoly practically one?

Would it not be well to keep that thin line beneath wealth in Stage 2 from growing? Can it be accomplished?

Why not demand that when monopoly of any kind exists, it shall be restricted to a reasonable gain? Why not say that it shall not discriminate unjustly nor use its great power against the public welfare? If monopolies possess such Force that one man cannot compete with them, why not let the state — all men combined — control them? Why not oppose Force by Force? Is there any other way? When business affects the interests of all, is it not something more than a private matter for the concern of a private individual?

Why not take by taxation some of that wealth acquired by Force? Why allow idle sons and daughters to waste this wealth; why not tax them by graduated income, inheritance and increment taxes, so that they bear a burden proportionate to their strength, in order that the burden of maintaining the state shall not fall so heavily on the poor? Will this be permitted? Will not that same dreaded Force terrorize our legislators? They are but human, with business interests and families to support.

Why not make public the affairs of monopolies, so that they cannot buy the votes of electors or legislators? Why not limit the power of wealth in elections? It cannot buy the *whole* people, can it? If not, why not make our legislators directly responsible to us so that we may watch them? Why not simplify the whole machinery of nomination and election so that we are certain to elect the men we want — men of honesty and strength?

But do not the trusts defy our laws after we have passed them? Who is powerful enough to enforce them for us? The courts? Theoretically, yes, but practically, do we not need something nearer to the legislators — a strong right arm of the legislature? Should we not have a vigilant servant who, with the help of trained experts wily enough to cope with every turn, will relentlessly administer and enforce? Should not this servant be a friend of the poorest citizen, a friend to whom in unfair dealings he may turn and receive justice quickly and surely?

But the efficiency expert will say that we have omitted the principal problem. The German treasurer in the story went down to the unit — the *Man*. Why not teach the man to look out for his own interests? We must make him more efficient so that he can plant more and make more. This is a difficult task if he is the slave of economic necessity, because it will necessarily cost money. Truly, but can we not obtain some of

that money from the graduated taxation of which we have already spoken, or in the way that Lloyd George is getting it? Why not invest something in the farmer and the mechanic so that he will become more efficient, so that he will have a better home, better prospects, and greater skill, which will be an advantage to him in contract? While we are teaching him this, why not teach him how to live so that he may be strong and vigorous; why not show him his rights under the law and advise him as to the most advantageous way in which to market his goods, whether it be his skill as a mechanic or his oats?

We have followed a long and winding path, Mr. Reader, to show that no one categorical explanation of the Wisconsin idea can be given.

Although no definite plan has ever been laid, strangely enough the development of the efficiency of the individual and the safeguarding of his opportunity, the jealous guarding of the governmental machinery from the invasion of the corrupting force and might of concentrated wealth, the shackling of monopoly, and the regulating of contract conditions by special administrative agencies of the people have been under way to some slight extent in Wisconsin.

Why should not the state be the Efficiency Expert? Should the state stand idle while its lands are despoiled and its people are placed in bondage to a few of its members? How have the great monopolies gathered their

power, save by taking to themselves governmental powers because, under a worn-out doctrine of so-called industrial freedom, the government did not utilize all its functions? Is it better to allow such irresponsible parties to have the power of fixing rates and prices rather than the state? Is it better to permit them to make the laws rather than the state? Can they fix market and credit conditions, say who shall be permitted to do business, and in what manner, better than the state? The power to tax is the power to destroy. Shall we allow them to lay whatever tax they see fit upon industry and to shift their own burdens where they will? Shall we allow them, when they are fined for wrong-doing, to shift the fine to the persons who imposed it by the simple process of raising the rates or prices?

The reader will find no dogmatic conclusions set forth in these pages. He will be disappointed if he expects certain vivid pictures of perfect legislation or administration or clear-cut philosophy. He will find, on the contrary, a seemly comprehension of the difficulties of the problem as above outlined and a groping after and testing of one device after another to serve in combating the tendencies considered. He will find that patient research and care have been the watchwords used everywhere. It will be explained how one piece of machinery made another necessary, how educational, industrial and welfare legislation were deemed the wise and necessary

accompaniment of legislation intended to revolutionize the electoral machinery, which itself became necessary in order to initiate and assure great economic legislation.

Always he will find the constant harking back to the just regulation of the conditions of contract between the powerful and the weak whenever public interest demanded it — the cause of the supreme struggle with which the movement began and with which every milestone is marked.

And, Mr. Reader, do not think that this program could be started or forwarded on its way for one moment without conflict. It is all very well to talk of constructive legislation as if it had been outlined in a blue print by some political science architect, but do not forget for an instant that there was a relentless war in this state for many many years and each advance was made only as a result of that war. The history of that struggle has been told by others. This little book attempts to show what has been the outcome of that struggle and of the combination of circumstances and conditions which made good soil for certain ideas to take deep root.

CHAPTER II

The Soil

Economic pressure generally results in legislation. If an automobile were driven wildly upon a prairie and neither harmed nor killed any one, there would be no necessity for restrictive legislation. It has been possible for the doctrine of industrial freedom to exist in America for a similar reason. No one demands laws restricting the rights of others in the use of land or minerals when there is an abundance of both. It is only when men touch elbows that laws which narrow and define human freedom come into being. A new country requires capital, and capitalists must have inducements in the form of tremendous gain in order to assume the risk. In a new country, capital is a goddess to be propitiated. It is somewhat surprising, therefore, that the doctrine of the power of the state should spring up in Wisconsin, which in 1900 produced more lumber than any other state in the country. One would scarcely expect that legislation of a type which would lead one to think that its makers believed with Professor Schmoller that the state is "the grandest existing ethical institution" would gain a stronghold in such a community.

It is strange that, notwithstanding all the battles, the constructive legislation growing out of these conditions was of such an orderly character, so lacking in danger to prosperity and so harmonious with the social development of the state. The leaders deserve our commendation because they realized the necessity for this thorough, painstaking construction. Fortunately for them, the character of the people was such that it constituted an element contributing to the advancement of their plans.

Wisconsin is fundamentally a German state: the Germans were the first to arrive in significant numbers, although they were followed later by a large influx of Norwegians. Both of these peoples from the great Teutonic branches have been noted for their steadfast love of liberty and the systematic way in which they proceed with government. The "forty-eight" Germans, those of the Carl Schurz type, came fresh from a struggle for liberty in the old country, and brought with them as high ideals as any people who ever came to America. Under these influences, the farms of Wisconsin were settled and an orderly, careful government established. A New England stream arriving about the same time brought with it high educational ideals, which endowed the whole Northwest with colleges and institutions of learning. It was under these auspices that the University of Wisconsin was founded, having indelibly impressed upon it a certain distinction which it has never

ceased to have, and certain ideals of service which can be found in no other universities to-day, except perhaps in Germany.

It is significant that among the first regents of the university was Carl Schurz, the great hater of bad government, the enthusiastic, patriotic statesman, the powerful champion of civil service. Instituted as it was by these liberty-loving people, it is not strange that the university should have had as one of its great presidents, John Bascom, a man of the highest type of New England character. Bascom was an economist; he was more than an economist. Political economy to him was not a dismal science; it was a science by means of which order, morality and statesmanship could live; it had a moral force.

He declared "that, while the laws of legitimate acquisition look to the good of all, and not to the plunder of any, any illegitimate action which violates a higher, a moral law, will usually violate a lower, an economic law, and measure the gains of one by the losses of another. There is a harmony of productive action by which the gains of all are secured, and the laws of this harmony are those of Political Economy. Intimately connected with this view, is that by which the harmony of the lower laws of acquisition with the higher laws of morals is seen, and the mutual strength which they lend to each other. The state of highest production not only may be, but must be, the state of highest intelligence and

A page from the directory of the officers and students in the University of Wisconsin. Note the German and Scandinavian stock!

Knott, Rodney D., Eau Claire, A Mid 1—4445
Knotts, Frank, Gary, Ind., E 1—3683
Knox, Flora R., Milwaukee, L S 4—307
Knudson, Barney, Algoma, E 1—1611
Knudson, Jeanette L., Madison, L S 4—1797
Knutson, Martin H., Ridgeway, A 3—2811
Koch, Harry J., Davenport, Ia., C C 1—3982
Koch, Orville C., Plymouth, C C 2—3187
Koch, Oswald T., Osceola, L S 4—4529
Koch, Vincent W., Janesville, L S 3 Med 1—197
Koehler, Jennie E., Menomonee Falls, H Econ 2—2560
Koehsel, Minnie C., Madison, L S 3—547
Koenig, Alfred E., Madison, L S Grad—1026
Koenig, Ruby E., Two Rivers, L 2
Koepke, William C., Waukesha, Nor C 3
Koester, George F., Chicago, Ill., L S 2—178
Kohl, Edwin P., Marshfield, L S 3—1141
Kohler, Bert M., Chicago, Ill., L S 3—2744
Kolls, Alfred C., La Crosse, L S 3 Med 1—805
Koltes, Raphael P., Waunakee, L S 2—2672
Kolinsky, Pete C., Racine, L S 4 L 1—2864
König, Selma S., Weyauwega, L S 4—4004
Kootz, Arthur C., Milwaukee, L S 2—186
Korst, Philip B., Janesville, M E 3—2999
Kottnauer, Edwin H., Milwaukee, Ch E Ad Sp 2
Kouns, Sarah M., Upper Sandusky, O., L S 2—1488
Kowyowundjian, Garabet, Racine, E 1
Kozarek, Steven A., Antigo, C E 4—2257
Kraemer, Edward C. A., Milwaukee, A 1
Kragh, Stella M., Madison, L S 4—2923
Kratz, Clara, Schleisingerville, M 3—2737
Krause, Emil F., Sawyer, E 1
Krause, Linnie, Ridgeland, L S 4
Kraus, Raymond J., Marshfield, E E 3—3036
Kreis, Elizabeth, Wheaton, Ill., L S 1—156
Krell, Samuel A., Madison, C E 4 Adv C—4779
Kremer, Eugene E., Fond du Lac, L S 4—2864
Kremers, Roland E., Madison, L S 1

virtue; and the highest intelligence and virtue cannot fail to be productive of the greatest wealth. The interests of production are often seen to be so parallel with the path of virtue, as to be more provocative of virtue than virtue herself. The admirable interaction of the laws of the several departments of man's social nature, the mutual support which they render each other, and the general concurrence of their motives, present topics not less suggestive of divine skill than those of the external world." He taught, he philosophized, and he left a deep impression upon this state and upon the university. In his classes were men like Senator Robert M. La Follette, Judge Robert G. Siebecker of the Wisconsin supreme court, and Charles R. Van Hise, now president of the University of Wisconsin.

On December 13, 1911, memorial services were held for this man at the university. The full tide of his influence was clearly shown at that time, the beginnings of which Bascom himself had lived to see. The following tributes paid to his memory show the respect for and appreciation of his work and influence.

Said Judge Siebecker on that occasion: —

"He held to the principle that we are bound in duty to use the school as a means of helpfulness in the world and that every true educational principle takes issue with any system of instruction that omits to call upon the school to take its place in the state as a constructive agency in the highest social economy."

Dean E. A. Birge said: —

"I question whether the history of any commonwealth can show so intimate a relation between the forces which have governed its social development and the principles expounded from a teacher's desk, as that which exists between Wisconsin and the classroom of John Bascom. No social and political movement is even in part the work of one man or one set of men, and no one who knows the history of Wisconsin can be ignorant that the state was fully alive to the need of economic reform before Dr. Bascom came here, and that it was ready to attempt to put such reform into practice. But it is equally true that no social influence in Wisconsin during the past generation has been more potent than that of Dr. Bascom — all the more potent during the quarter of a century in which it has been silent. The social movement of the state has been rapid, sane and just, an unusual and rare combination of qualities. Among the foremost influences that have secured these qualities are those radiating from Dr. Bascom's classroom, appealing first to his immediate students; less immediately, but still directly, to the many students of the university who did not get to his classroom, and through all these affecting the temper of the people of the state."

Strange as it may seem, the same philosophy which was being taught in the University of Wisconsin was slowly becoming the dominating influence in Germany. The strength of this theory, even in remote times, is clearly shown in the writings of early German economists. The belief that it pays the state to concern itself in the betterment of human beings and the protection of human welfare, in order that it may receive in return a rich reward from this investment, is not a new one.

While Germany, shattered by the Napoleonic wars, was striving to solve her problems through methodical development under the iron hand of Bismarck, Wisconsin, the great German state of this nation, was slowly forming, through the university and its teachers, certain ideals which in the future were to have a marked effect upon its legislation. In Germany the scholar was recognized and respected as a leader; in the German universities the lamp of liberty was ever kept burning brightly. It was to the German scholar that Bismarck invariably turned for aid in the development of the legislation which has characterized Germany for so many years past — the legislation which built it up from a country of poor peasants to a great nation, second to none in the prosperity and the happiness of its people. While this German movement, with its practical system of economics, was slowly growing and developing in its universities, other economic and political ideals had dominated England and were transplanted to America. Even before the time of Napoleon, there had dawned in England the philosophy of *laissez faire*. The history of its expansion through the school of Adam Smith and John Stuart Mill, every schoolboy knows. The idea in it of independence and personal and industrial liberty suited our American spirit. The concept that the state should have nothing to do with the affairs of men, that the state was a necessary evil, that men do best when

left alone, appealed to the men of America, as it did to the immigrants, who rushed to our ports from the countries of Europe, land-hungry and sickened by the laws which had bound them in the old country. It was not strange that the doctrine of industrial liberty took deep root in America and found its way into our law and into the teachings of our professors. While the able and inspiring Professor William G. Sumner, the teacher of President Taft and of State Senator John M. Whitehead, the great opponent of La Follette, was expounding this philosophy in no uncertain phrases at Yale, while the eastern colleges were everywhere satisfied, both in the law schools and in the courses of political economy, with this doctrine of industrial liberty, there was being evolved in Wisconsin under German influences a new doctrine which did not take form save in humane ways, until after its teacher had ceased his activities. But John Bascom and his economic teaching were not forgotten; nor were Carl Schurz and his political ideals forgotten.

In Germany, prosperity had not resulted immediately from the efforts of her economists, and the Germans, fleeing from the poverty of the old country and arriving on our shores by the hundreds of thousands, were slow to realize the mighty forces at work which were destined to stop that tide and show to all men the wisdom of the new doctrine of the judicious interference of the state.

When Sumner was in his prime and the eastern colleges were dominated by his great mental strength and the clearness and force of his lectures and writings, a student left Columbia university and went to Germany to study under Carl Knies and Wagner; there he absorbed the inspiration of New Germany. He saw an empire being fashioned by men regarded in his own country as merely theorists; he realized that these Germans were more than mere theorists; that they studied the problem of human welfare; that they were laying the foundations for a great insurance system; that they foresaw the commercial prosperity of the country built upon the happiness, education and well-being of the human units of the empire; that order, intelligence, care and thought could be exercised by the state. Imbued with inspiration by these great teachers, this young man returned to America. He walked the streets to obtain employment as a teacher, and after nearly starving, was engaged by a kind Jew as tutor to his children. Finally, after many vicissitudes, he became an instructor at Johns Hopkins university. Gradually the country began to understand that a new teacher had appeared in America. Books on economics were issued which actually seemed to deny the old "wages fund" doctrine and the theories of value which were promised by the economist in England and in this country. In fact, many thought that what he wrote was not

political economy at all; they did not recognize it as such. His books and his articles began to attract attention, probably because people began to feel, in a vague way, that something was wrong with our philosophy.

The captains of industry held sway in our country, the great trusts began domineering our political life, the country began to be more crowded, periods of depression came oftener, and the old doctrine, advocated by Sumner — that the state should not interfere with industrial life — was not altogether satisfactory. A group of thinkers began to follow the leadership of this man. Richard T. Ely finally came to the University of Wisconsin as a professor of economics. Here was another singular coincidence. The pupil of Knies and Wagner, coming from Germany with his German political ideals, succeeded Bascom as a teacher of political economy in the German university of the German state of Wisconsin. A curious condition surely! He was regarded as a socialist, and before long was tried by the regents of the University of Wisconsin as a socialist. After great excitement, which is still remembered throughout the state, he was acquitted, and the regents in acquitting him gave forth the following statement:—

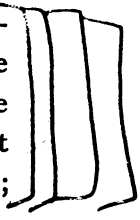
"In all lines of investigation . . . the investigator should be absolutely free to follow the paths of truth, wherever they may lead. Whatever may be the limitations which trammel inquiry

elsewhere, we believe the great state of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found."

Hence it is not surprising that in the republican platform for 1910, after the University of Wisconsin had gone through a trying siege in which its professors were again accused of being socialists and of "interfering in politics," that a political party, dominated by a student of Bascom's, and having in it many of the students of Ely, should have repeated word for word the same phrases which were written seventeen years previous, nor that the class of 1910 should have presented a tablet to the University of Wisconsin, inscribing upon it the following portion of that acquittal:—

"Whatever may be the limitations which trammel inquiry elsewhere, we believe that the great state of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found."

Thus succeeding Bascom and Ely came a long line of young men, many of them of German or Scandinavian stock, who were impressed with the ideas that Ely expounded at that time. He preached a curious new doctrine, a "new individualism," that men deserved the right of opportunity and benefited by it; that it was the duty of the state to preserve to them opportunities; that the state was a necessary good and not a necessary evil;



that the great institution of private property was good, and furthermore existed for public good, but that if any particular part of it did not exist for public good, it should be *made* to do so. He was practically the organizer of the American economic association. The principles he laid down have extended over the country and are being taught in all the principal colleges; his pupils have inspired men who have taught others. He has gathered about him in the University of Wisconsin a group of men who have studied with him and received inspiration from him. At a recent meeting of the American economic association it was found that there were present seventy professors or instructors in colleges who at some time in their career had been his pupils.

The doctrine that the state should have more to do with economic welfare had spread throughout the entire country, but in no place had it found better soil nor had greater results than in the German state of Wisconsin. German professors have come repeatedly to Wisconsin and have been surprised by the German spirit in the university. Therefore it is only natural that the legislation of Wisconsin should receive an impetus from men who believe that laws can be so constructed as to lead to progress and at the same time preserve to the fullest all human betterment; that the advice of scholars may be sought; that what has made Germany happy and prosperous may be duplicated in

America; that business and human welfare can increase side by side and that the best investment which the state can make is that which makes every home better, for when intelligence goes into the product, that product will win out in the race for the commercial supremacy of the world. If Wisconsin is a prosperous state to-day, there is no doubt that it is largely because of German ideas and ideals, early instituted in the state.

The Scandinavian element came later, but was animated by the very same ideals. Indeed, they became stimulated in many cases before they came to Wisconsin. Every Norwegian, Swede or Dane who pays a visit to-day to the Scandinavian countries returns an easy convert to the ideals which seem to have dominated Wisconsin during the last decade or more. Many of the leaders are found among the Scandinavians. Many important posts, influential in the guidance of the different commissions, are filled by men who have traditions from the old countries. It is worthy of comment that a Scandinavian statistician was responsible for the detailed statistical work of the railroad commission and that another gifted man of Norwegian stock has been the chief means of promoting splendid insurance laws in this state. The Norwegian element is much more active than the German in politics; it is much more aggressive. For many years one of the most talented members of the tax commission has been of that race, and it is not un-

usual in the legislative body to hear Norwegians, Danes or Swedes quote in debate the high standards maintained in Norway or in the Scandinavian countries. Men familiar with foreign agricultural methods and those trained in the people's high schools of Denmark or in the scientific schools of Sweden or Norway are helping to organize county agricultural schools. Behind this Wisconsin movement is a great body of tradition, a tradition of orderliness and of scientific methods, a knowledge that things can and should be done by experts in a careful and diligent manner and that progress must come, slowly but thoroughly.

If we are going to understand Wisconsin legislation, we must fully realize that the leaders of it could not be agitators of the type which is seen frequently in other parts of the country. However radical their ideas may have been, however original their methods, it was inevitable that legislation should be constructed slowly and cautiously. The men who have had the greatest influence in making that legislation what it is, were inspired by these ideals. The people of Wisconsin would not have supported any wild or extravagant legislative schemes. The stock is too sturdy, too cautious and too conservative to be swayed by any revolutionary influence. The leaders had a stubborn, determined people with whom to deal. They were slow to move, as they are to-day, and it took long patience and fighting to win them, but once moved, they "stayed put."

It must be remembered that there have been those who believed in the social or educational features, who wavered or halted in the long fight because of certain political legislation hereafter described. There have been some who opposed the political changes, but who are now seemingly acquiescing or even actually approving because of what seems to be fairly good and sane results from the last decade of political innovation and economic regulation.

CHAPTER III

The Regulation of Business affected by a Public Interest

The railroad was the first of the great monopolies to need regulation. The settler coming into a new, raw country was absolutely dependent upon transportation facilities; it was natural that he should treat the railroad like a spoiled child, and it was likewise natural that the railroad should take advantage of him. Human selfishness unless checked will always take such advantage. It must be remembered too that the securing of capital to bring a railroad into new territory was no easy task and the man who did it was entitled to a large reward. Abuse, however, was inherent in the system.

The farmer had one great Necessity — transportation. Transportation was in the hands of a monopoly — the railroad. The farmer was obliged to send his grain to market; the railroad, having Advantage on its side, demanded its price. The farmer answered that he could not pay it and have any profit. He appealed for justice and was told that there was common law governing public carriers which would relieve him from extortion. With confidence in our constitution and the

judiciary, he went before the courts, calling for justice, and demanded his "day in court." He got it, but there were *too many* days in court. He appealed, and he fought and went from court to court, single handed, always impeded by increasing Necessity. Wiser and sadder, but deeply perplexed, he learned that the vaunted common law was strong in name but a shambling thing in action. He gave up stubbornly; he had been told of the glories of our constitution, and yet he could not but believe that there was something wrong, but resented as unpatriotic any such thought. It took a long time for him to learn that if he would live, he must accept the terms of the all-powerful one who could either make or break him; he learned to do the political bidding of the one who had Advantage. He became a cynic and distrusted the "agitators," of whom he was warned by the agents of the powerful one.

Turn back through the pages of history, study them well and read the results of this advantage in contract in the old days, as depicted by A. B. Stickney, a railroad president: —

"The managing officers were now potentates, — 'railroad magnates,' 'railroad kings.' They travelled in state, surrounded by their personal staff, the heads of the different departments, who were almost as important personages as their chiefs. When they visited a town on their lines, the principal business men rushed to greet them. The fat of the land was at their disposal. Merchants

sent baskets of champagne to the heads of the traffic departments and sealskin jackets to their wives, while on the other hand, special rates were liberally bestowed upon their favorites. Special clerks were required to be wholly employed in issuing free passes. Judges and juries seemed to have a perceptible bias in their favor, the brightest attorneys were retained, and minor officials were glad to grant them favors. The country press was subsidized with passes for editors, their families and their friends."

A distinguished Englishman, the author of "The American Commonwealth," describing the palmy days of the dynasties, says: —

"These railway kings are among the greatest men, perhaps I may say are the greatest men, in America. They have wealth, else they could not hold the position. They have fame, for every one has heard of their achievements; every newspaper chronicles their movements. They have power, more power — that is, more opportunity of making their personal will prevail — than perhaps any one in political life, except the President and the Speaker, who, after all, hold theirs only for four years and two years, while the railroad monarch may keep his for life. When the master of one of the greatest Western lines travels towards the Pacific on his palace car, his journey is like a royal progress. Governors of states and territories bow before him; legislatures receive him in solemn session; cities and towns seek to propitiate him, for has he not the means of making or marring a City's fortunes?

"Such was the beginning of the dynasties of absolution in the management of Western railways (under the conditions of modern civilization the public highways of the land), which have since afflicted the business of the country, and are now, by both a reflex and direct influence, crushing the business of the railway companies

as well, and gradually reducing these noble properties to the verge of bankruptcy. Conceived in the womb of usurpation, nurtured by the power of might, these dynasties take no note of the progress of the world of thought or of changed conditions, but, like their Bourbon prototypes, they neither move forward nor backward, they neither learn nor forget."

How could an individual contend against a force like that? In the words of Chief Justice Ryan, in the first great railroad case in Wisconsin,

"Their influence is so large, their capacity for resistance so formidable, their powers of oppression so various, that few private persons could litigate with them, still fewer persons would litigate with them for the little rights or the little wrongs which go so far to make up the measure of the average prosperity of life."

But a few kept on with the fight, and notwithstanding the power of the railroads, the "Granger movement" suddenly took form. Someway or somehow it was realized that the state — the whole body of citizens as a unit — could collectively accomplish what one man, single handed, could not, *i.e.* equalize the conditions of contract by placing *force* against *force*. This is why the "Potter law" for the control of railroads was enacted in Wisconsin in the early seventies. That law was a crude attempt; it was full of long schedules of rates made in a haphazard manner by the legislative committees. It did, however, lay down the precedent that when a force is so great that no one individual can meet it and receive

fair treatment, justice must be given to that individual by the aid of the state.

A weak organization of straw, called by courtesy a railroad commission — an elected commission — was next established as a sop to public opinion. This did not relieve the situation, but left the complainant still bearing the burden of litigation.

It was many years before there appeared to again arouse public opinion a far-seeing and persistent fighting man, A. R. Hall, to whose memory there is a bronze tablet in the new capitol in Madison. Public sentiment had become so deadened, the railroads had become so powerful in the affairs of business, and the manufacturers and business men of the state were so fearful that "capital would be driven out of the state" by any restrictive legislation, that A. R. Hall was literally jeered at and laughed down as a crank when he persistently introduced his railroad bills into the legislature. His work, however, was not without results. A stronger movement, led by Robert M. La Follette, now United States Senator, soon awakened the people, swept the state and made La Follette governor. Hall had persistently advocated the *ad valorem* taxation of railroads. This was made an important issue and was finally passed. In this case, what Walt Whitman once said proved true,

> "It is provided in the essence of things that from any fruition of success, no matter what, shall come forth something to make a greater struggle necessary."

What was to prevent the railroad from raising the rates in order to provide for the increased taxes? Some protection was necessary, so in 1903 a bill was introduced based upon the Iowa plan, whereby the commission made a schedule of rates for the railroads to follow. This bill was the cause of a severe battle in the legislature, but was finally defeated. The railroad question was made the issue of the next campaign, and the leaders determined to make the most perfect law possible. The Iowa plan was abandoned and the country was scoured for advice; the regulative law of all the different states and of foreign countries was closely scrutinized. No more patient study was ever given to any one bill in the history of the state. The leader in all this research was Senator W. H. Hatton, a man of large business interests and great ability. He introduced a new principle and laid down the thesis that it was as much the duty of the state to furnish transportation facilities as it ever had been to make roads or build bridges, and that if the function was delegated to any one, it was the duty of the state to regulate it so that the agent should be required to furnish *adequate service*, at *reasonable* rates without *discrimination*. When the legislature opened Mr. Hatton was appointed chairman of the senate committee on railroads and began his long and patient struggle for the passage of the bill in spite of practically a hostile majority. During this entire

contest, he was aided by a keen lawyer and able debater, Senator George B. Hudnall, whose vigorous work on this committee is worthy of comment. Draft after draft of the bill was submitted to the railroad attorneys, university professors and to all the experts available whose arguments and criticisms were duly considered. Months went by. Seeing the railroad attorneys constantly around the committee, the more radical and impatient of the legislative leaders began to assert that they were being betrayed. In due season Mr. Hatton presented the bill, which was so strong and fair that no real attack could be made upon it.

This act is of great importance, for it laid the foundation for a series of laws, many of them following its exact language, and it has been considered in detail not only because of its importance, but also to show how patiently and thoroughly Wisconsin acts are prepared. The legislature is seldom impatient; it has recently adopted the expedient of drafting tentative bills, giving hearings and redrafting bills through investigating committees, a long while before the opening of the legislative session. The procedure by which the legislature passed the railroad commission act is now practically a settled policy. A committee is granted plenty of time and expert help if it will produce results, and the legislature is apparently willing to prolong the session to any length in order that it may do its work thoroughly and well.

The act covers complete regulation, both as to rates and service, not only of railroads but of all correlated organizations, such as refrigerator lines, sleeping cars, transportation and despatch companies of all kinds, as well as equipment, regulation of passes, mileage books, sidings, switching and terminals; in short, the whole railroad business. The simplicity of its procedure is worthy of note. Senator W. H. Hatton said before a committee at the time of its formulation, "I want this procedure so simple that a man can write his complaint on the back of a postal card, and if it is a just one, the state will take it up for him."

After all, for what purpose was the whole thing constructed but that there might be plain justice? Reversals, demurrers, rules, appeals, errors — the whole troop which had clouded the reason of judges and added to the squabbles and fees of lawyers — were excluded: —

Said Senator Hatton: "At a hearing before the commission both the complainant and the corporation shall be given full opportunity to offer testimony of every kind relating to the matter at issue.

"After any such hearing, if the commission shall find the rate complained of to be unreasonable, immediate relief shall be given and the commission shall fix a reasonable rate to be substituted for the rate found to be unreasonable. The new rate must be submitted to and observed until passed on by the courts and thereafter unless it shall be declared by the court to be unlawful, as

the rate made by the corporation was submitted to and observed until it was declared by the commission to be unreasonable.

" It would be an injustice to the complainant as well as others who are required to pay the unreasonable rate to allow the matter to be taken to the courts upon appeal to be tried de novo and allow the old rate, which has been declared to be unreasonable, to remain in force, pending the judicial determination.

" To try the case anew in the courts, the old rate remaining in force meanwhile, and keep the complaint entangled in litigation, would not only be unjust to him, but would delay the equitable adjustment of rates by deterring others from making complaint, for the majority will submit to wrongs rather than engage in lengthy litigation with wealthy corporations.

" The complainant having won his case before the commission, should be relieved from further litigation and thereafter the state must defend the acts of the commission, for it is a matter of public concern. Therefore, let any party in interest who is dissatisfied with any order of the commission bring an action in any court of competent jurisdiction against the commission as defendant to set aside any order made by it, fixing any rate, on the ground that the rate made by the commission is unlawful.

" In trials before the courts, if there is offered any new material evidence or any different evidence than that offered at the hearing before the commission, the court shall stay its proceedings for fifteen days and remand the case to the commission for rehearing. This procedure prevents the withholding of material evidence at the hearing before the commission for the purpose of introducing it at the court trial, thereby securing a reversal of the order and thus discrediting the commission, and it compels the submission of all testimony to the commission for consideration before its final action. At the hearing before the commission the question passed

on is the rate made by the utility corporation, and the burden of proof is then upon the complainant, he being the plaintiff, to show by preponderance of evidence that the rate complained of is unreasonable; if he succeeds in so doing, then in a court trial, in an action brought by the utility corporation, the question will be on the rate made by the commission and the burden of proof will then rest upon the utility corporation, it being the plaintiff, to show by a preponderance of evidence that the rate made by the commission is unlawful."

The following is that section of the law relating to complaints: —

"*Complaints and investigations.* Sec. 1797–12. Upon complaint of any person, firm, corporation or association, or of any mercantile, agricultural, or manufacturing society, or of any body politic or municipal organization, that any of the rates, fares, charges, or classifications, or any joint rate or rates are in any respect unreasonable or unjustly discriminatory, or that any regulation or practice whatsoever affecting the transportation of persons or property, or any service in connection therewith, are in any respect unreasonable or unjustly discriminatory, or that any service is inadequate, the commission may notify the railroad complained of that complaint has been made, and ten days after such notice has been given, the commission may proceed to investigate the same as hereinafter provided. Before proceeding to make such investigation, the commission shall give the railroad and the complainant ten days' notice of the time and place when and where such matters will be considered and determined, and said parties shall be entitled to be heard and shall have process to enforce the attendance of witnesses. If upon such investigation the rate or rates, fares, charges or classifications, or any joint rate or rates,

or any regulation, practice or service complained of, shall be found to be unreasonable or unjustly discriminatory, or the service shall be found to be inadequate, the commission shall have power to fix and order substituted therefor, such rate or rates, fares, charges or classification, as it shall have determined to be just and reasonable and which shall be charged, imposed, and followed in the future, and shall also have power to make such orders, respecting such regulation, practice or service as it shall have determined to be reasonable and which shall be observed and followed in the future.

"*a.* The commission may, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately, and at such times as it may prescribe. No complaint shall at any time be dismissed because of the absence of damage to the complainant."

The following is the simple language in which the great power to fix rates is couched:—

"*Commission to fix rates and regulations: procedure.* Sec. 1797–14. Whenever, upon an investigation made under the provisions of this act, the commission shall find any existing rate or rates, fares, charges, or classifications, or any joint rate or rates, or any regulation or practice whatsoever affecting the transportation of persons or property, or any service in connection therewith, are unreasonable or unjustly discriminatory, or any service is inadequate, it shall determine and by order fix a reasonable rate, fare, charge, classification or joint rate to be imposed, observed, and followed in the future in lieu of that found to be unreasonable or unjustly discriminatory, and it shall determine and by order fix a reasonable regulation, practice, or service, to be imposed, observed, and followed in the future, in lieu of that found to be un-

reasonable or unjustly discriminatory, or inadequate, as the case may be, and it shall cause a certified copy of each such order to be delivered to an officer or station agent of the railroad affected thereby, which order shall of its own force take effect and become operative twenty days after the service thereof."

The authors of the bill were exceedingly careful to stay within the bounds which hedge about the delegation of legislation. All Wisconsin legislation of this kind is based upon the simple and yet effective device which may be paraphrased as follows:—

1. Rates shall be reasonable.

2. Our servant, the commission, shall ascertain whether they are or are not. If they are not, they shall be made so.

In other words, the plan carefully allows the legislature to make the law; the commission does nothing but administer the wish of the masters, — the legislature. The commission does not attempt in any way to legislate.

An understanding of certain expedients and devices used in this law will lead to a clearer view of the principles underlying the greater part perhaps of the legislation described in what follows.

Like the railroad commission all commissions are practically appointive. In dealing with complex economic subjects the legislature lays down general principles — determines the general policy and turns over to

appointive commissioners the responsibility for the administration of these principles. The appointive method is used because it has been felt that it is just as ridiculous to elect a railroad commission as it would be to elect, on a state-wide ballot, a professor of comparative philology at the university.

The other device that is used, when it is found necessary to control an economic factor affected by a public interest, is public bookkeeping. This may take the form of accounting, valuation, etc., but the assumption is that if the state is a partner, it must know all the facts.

The third great expedient is reliance on the trained expert or, at least, the proper recognition of the fact that the work should be carried on by men who have acquired ability either by training or by experience.

The fourth expedient is little understood, and yet is one of the most powerful factors, *i.e.* the continuing appropriation. The commissions can all be controlled by the majority of the legislature, but are not at the mercy of every whim of the minority.

Running all the way through the regulative legislation is the same idea — the welfare of the state is the welfare of the individual. Real rights, not theoretical ones, must be guaranteed the individual. The position of the strong and the weak must be equalized by a powerful state intervention, if necessary to the attainment of quick and certain justice.

The state is always an interested party. It means merely that when a man is weak he has a big brother to whom he may turn, who judges his case and says to the strong one, "I am here not only as a judge, but also to protect the weak against the strong. The burden of proof is upon you to show that my rulings are unjust. This man cannot make any progress toward real justice in the face of all the difficulties which beset him." And it is not always a single individual who is too weak. As Professor Ely says: —

"How helpless against a combination of railways is the city of twenty-five thousand inhabitants when struggling to do such a seemingly small and entirely right thing as to provide gates at grade railway crossings. The writer has one case in mind. The very modest efforts of the city were met with the threat that the railway shops would be removed to a village some thirty miles distant and in an adjoining state. Even the city of Chicago has had a mighty struggle, continuing for years, in its efforts to protect life at railway crossings. At one time it was proposed by the railways to leave Chicago and build another city in adjacent territory to escape what was regarded by the railways as oppression on the part of the city."

The following diagram will illustrate the one great central device which has been used over and over again. In Diagram I is shown *g*, *h*, *i*, *j*, *k*, *l*, *m* — small shippers. Each man has to take up individually his particular case against "*A*" — the railroad, a corporation composed of *b*, *c*, *d*, *e* and *f*, — that is, a coöperative, collective agency — an organized body. The small shippers are obviously,

from an economic standpoint, at a disadvantage against this organization. They also have great difficulty in trying to prove their case before the courts when they have not even publicity as to the facts to help them.

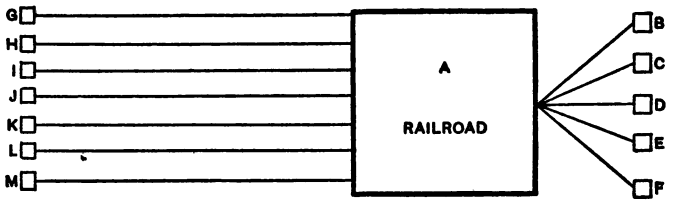


DIAGRAM I

Diagram II shows the establishment of "*Z*" — the commission. Here we have a coöperative, organized body to deal with the coöperative body "*A*." After all, the device is similar to that used by labor unions in this country and by the great coöperative farmers' movements in Europe and Australia.

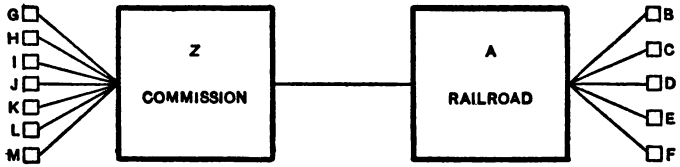


DIAGRAM II

Now let us consider Diagram III. If it is right that *g*, *h*, *i*, *j*, *k*, *l* and *m* should have somebody to go to, if it is right that "*M*," who as a shipper having a case relating to a few bales of hay, should have some means

of getting speedy justice, what will we say about "*N*" and "*O*," who have had limbs cut off through the carelessness of "*A*"? If we have given a remedy to "*M*" for his hay or potatoes, should we not give some certain compensation for "*N*" and "*O*" for their limbs? If the principle applies in one case, does it not apply in the other? Here we have the principle of the work-

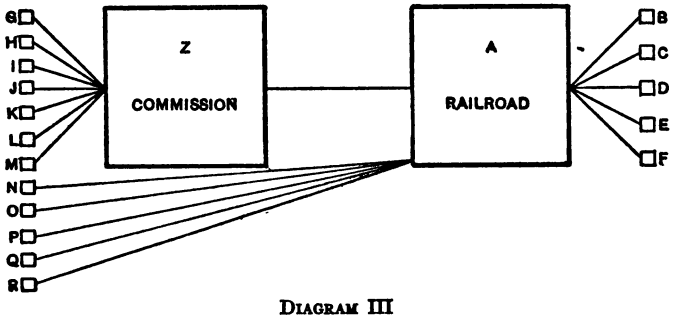


DIAGRAM III

men's compensation act, but suppose there are others — *p*, *q*, and *r*. "*P*" is a competitor who has a clear case of unfair discrimination in interstate trade against the steel trust. "*Q*" is a man who has a patent upon which there has been an infringement by the Standard oil company. "*R*" is represented in one of the following cases, which have been taken from a report on the investigation of certain insurance companies. They may be found in the Proceedings of the National convention of insurance commissioners held in Milwaukee, August 22, 1911, pages 20–21, 24, 47–48.

"Claim 31,805. FRANK HARMAN; liability $300.

"Insured was killed Dec. 5, 1908. He had had a policy in the Columbus Mutual Benefit, which expired Dec. 7th. A Phœnix Preferred policy was issued and paid for on Nov. 28th, it being understood between the insured and the agent that the Columbus Mutual Benefit policy would be dropped. At the time of the insured's death, the Phœnix Preferred's agent had possession of both policies. On Dec. 9th — four days after such death — such agent wrote to his company, asking it to send him an indorsement to the effect that the policy was not in force until the Columbus Mutual Benefit's policy expired. The company replied, asking the agent to forward the policy to the home office. The company then apparently put an indorsement on the policy in accordance with the suggestion of the agent. The company was sued and defended as per such indorsement — and won.

"In the opinion of the committee this was not only fraud but forgery, and those responsible therefor should be presented to the criminal authorities for indictment."

"Claim 31,958. WILLIAM LINK; liability $300.

"Policy concededly issued and paid for. Insured killed in grain elevator, while performing his duties. His widow, who had possession of the policy, delivered it, within two days after the accident, to the company's

district manager. The latter then forwarded the policy to the company with a brief memorandum on a slip of paper, saying:—

"'Will write you to-morrow in regard to this. I don't want to keep it in this office.'

"The next day the company replied:—

"'You were wise in not retaining anything in your office.'

"And, later reprimands its manager for sending in a preliminary proof, suggesting that 'it may cause us trouble.'

"A month later, when written to by the attorney for the claimant, the company states that it is unable to find such a claim and imagines that the widow has made a mistake in the name of the company and repeatedly thereafter denies that there is any record of such a policy. As a result of this flagrant larceny of the claimant's evidence, the company forces a compromise of $150, though informed that the claimant is a woman in destitute circumstances, with two small children, one of them but four months old."

"Policy 89,248. MIKE KORAN; liability $300.

"Insured died from fracture of the skull, March 29, 1907. The company, using first one excuse and then another, delayed in every possible way settlement of claim, though its agent writes, on April 18, 1907, that

there is not a shred of evidence that the policy was delinquent. The beneficiary — who could not speak English — was thus forced to engage an attorney. So far as the records show, these dilatory tactics were successful — and no payment was made."

"Claim 354,219. ANTON LUND, liability $5000.

"Policy covered double indemnity. Insured held a traveller's ticket policy and was killed in a railroad wreck. Company had no defence, save late notice, it seems to have been asserted because administrator — who was prevented from securing possession of the ticket policy by the coroner who took charge of the insured's body — did not make timely proof. As soon as administrator secured such policy he made proof. Beneficiary later sued company. Company then adopted dilatory tactics in the courts, its legal department writing the local attorney, as follows: —

"'As I have repeatedly advised you, the company does not desire that this case should ever come to trial, and our only intent is to adopt dilatory tactics, file demurrers, etc., and thus force an equitable settlement.'

And later: —

"'If you find that you cannot dispose of the suit within this limit ($2,500.00) I think we had better stand pat awhile longer, putting the trial off as long as we possibly can, and adopting all possible dilatory tactics. . . . To be absolutely frank, rather than let this suit go to trial, I would advise the company to pay on

the eve of the trial considerable more than the maximum mentioned.'

"The local attorney finally succeeded in making a compromise settlement for $2500, the face of the policy, thus evading the double indemnity."

The horrible thing about all this is that it is so universal. How can we make good citizens out of the fellow-workers of Anton Lund and Mike Koran with such an example before them? Is it any wonder that the "Boss" is triumphant in American politics? Why, the Boss is absolutely needed in a system of this kind! The Boss can get justice; he has power and sympathy and can strengthen his hold with every appeal for his aid.

Read the following from an article in *Everybody's Magazine* — true, every word of it.

"'Somebody's got to get hurt, and that's all there is to it. But there is one thing that makes the boys mad.' The speaker was a lean, quiet, shrewd-looking Scotchman of middle age, proprietor of a tiny lunch room where dinner is served for a quarter. He leaned over the desk, on his right elbow.

"'Who ought to pay the damage?' With his thumb he pointed to the limp sleeve that hung in place of his left arm. 'There is a law for damages,' he went on, 'and there's plenty of lawyers around the docks *who know just how to handle it.* These lawyers are employed by the Ship Company, or by some insurance firm that backs the Company, I don't know exactly which. All I do know is that for a good many years while I was at work as a docker

I watched how they did it. And havin' a feeling, as my good old mither in Scotland would put it, that I was foreordained to get smashed — I began to kind of study this damage law by myself, and decided just about what I'd do if the time ever came.

"'It did. One afternoon in the bottom of a ship my arm got hit from behind by the end of a big mahogany log.' He paused for a moment, then he added slowly, 'When I come to, down on the dock, I jest kept my eyes shut and shouted, "I won't sign anything!" Being somewhat frivolous-minded from the arm, which was pounding inside like twenty pile-drivers, I made the same remark to the ambulance man, and again to the hospital nurse when I come out of the ether that night. Then I got almighty sick. But when the lawyer arrived the next day, my legal mind was ready.

"'How much for my arm?' I asked. That started him talking and showing his long lawyer paper. At last he pulled out fifty dollars, and said they were mine if I'd sign and 'have no more trouble at all.'

"'"No more trouble at all," I said, speaking sad, "with a family, and no arm to work with, and fifty dollars to live on?"

"'Then, as he looked down on me in the bed, his face got lighted by hope, faith, and charity; he told me how sorry he was. But he said I'd been careless — in the eye of the law.

"'"This eye of the law," I remarked, "is a just eye — for me and the Ship Trust alike."

"'"Tries to be," he said.

"'"It's a kind eye for my wife and kids," I remarked.

"'"Tries to be," he said, looking sorry.

"'"And if I don't sign, and sue you in court for five thousand, it'll be a slow eye."

"'"Tries to be," he began, — but he grinned. "Your case wouldn't even be called for a year," he said, looking sorry.

"'I sat half up on my elbow.

"'"And if I go to court with every Tammany chief of the district — still a slow eye," I remarked.

"'The lawyer jumped, and his face got queer. He took the addresses I gave him, and went to see my friends. He came back the next day, and grinned kind of sheepish, and offered a thousand. I signed.'

"Talk with hundreds of men on the docks, and you will find that the Scotchman's opinion, rightly or wrongly, is the opinion of all. But few are as shrewd as he. Nine out of ten get nothing at all, or else settle at once for some beggarly sum. And so, having grown hopeless of this 'just eye,' they long ago started a scheme of their own."

Good soil for the anarchist and the firebrand, is it not, Mr. Reader?

Legal aid bureaus have been established in cities, but on the whole comparatively feeble attempts have been made in Wisconsin or any other place to carry out any definite plan to right some of these wrongs. Does it show that we need some other sort of machinery to-day to meet economic conditions? Does it show a breakdown of common justice? Does it show that we should have some coöperation on the part of the judges in clearing up the procedure and the chicanery which has surrounded law? Is it not a serious matter that these crude devices above pictured have had to be used because justice could not be obtained and that, because wealth and strength did have in fact such a place in

our courts, such legislative devices were necessary in order to carry out in these modern days that justice which was guaranteed in our constitution?

It may suggest to the reader that not only is our legislative machinery, which has been so widely criticised in the past at fault, but that there may be other deep-seated faults which are not being corrected as rapidly as those committed by the legislature, and that the remedy in America does not merely consist of a few laws restricting corporations but that it must go deep down in the education of our lawyers, in the education of our people as to their rights, and in the changes in the forms of our government which will actually meet the economic stress of to-day.

It is a common thing in the legislative halls for some hoary head, learned in the law, to recite the old phrase "you cannot make men good by law." That may be true, but you can make men comparatively better — at least good enough to respect other men's rights. The device shown in the diagrams is as old as history. The state itself is based upon it. Without it civilization could never have existed. To illustrate, imagine a group of savages sitting in a circle feasting; the gaiety is suddenly interrupted by a huge savage who rushes into the circle, seizes the food and runs away with it. We can imagine our savages sitting in a circle, hungry and mourning over the loss of the food. One appeals

to the other to rescue the food. One braver than the rest strives to wrest it from the thief — and is killed. This occurs perhaps many times until some genius appeals to the desperate crowd, "Let's all go." They do go and pound the marauder over the head. Then it is that the law is made; that the rights of the weak begin to be respected by the powerful; that what an individual cannot do the collective strength of many can do — and incidentally in the future the chief offenders will be better men.

But, says the doubter, will not the time of this commission be monopolized with these cases? Will not Tom, Dick and Harry, every crank who has some imaginary injury, crowd this tribunal until it will be unable to do quick justice? This is not true, because when there is power enough, certainty enough and punishment enough the offending party will be glad to reach a settlement of some sort. If he has done wrong, the publicity given to that wrong will excite public opinion and the great corporations do not care for more of this excitement than is necessary. Crank cases are easily disposed of, and the case of the really injured is generally settled before it reaches the commission. If courts are complaining of being overburdened, they should take "judicial notice" of the above results of strong, clear, quick action. It is or should be one of the purposes of all law to diminish litigation and to

increase the number of cases settled amicably out of court by arbitration or by other peaceful adjustment. If the strong did not see so many loopholes in justice to-day, so many chances to wear out the weak by lengthy litigation, so many opportunities for appeals, reversals and all the long list of legal barriers built up against the "Man who has not," there would not be so many cases of this kind in court, the calendars would not be crowded—and incidentally, there would be more confidence in justice and the servants of the law, and perhaps less anarchy.

Public Utilities

The public utility act was the second important law based upon the principles established in the railroad commission act.

It was a general law, chapter 499, laws of 1907, regulating heat, light and water works and telephone companies. The street railway law, chapter 578 of the laws of 1907, provided for indeterminate permits, while street railways and telegraph companies were placed under the supervision of the railroad commission by chapter 582, laws of 1907.

The public utilities are now completely governed in Wisconsin by the railroad commission, an appointive board of three with practically unlimited power to hire

experts. Chapter 593 of the laws of 1911 provided for further regulation of stocks and bonds, while physical connection of telephones was required under chapter 546 of the laws of 1911. The same policy pursued in the railroad commission law is carried out in the public utility act. Physical valuation is the foundation of it. It will be seen at once that if we have physical valuation we are getting at the basis of all regulation. The intangible assets can be separated and the same reasons which justify its use by the railroad commission justify its application to all public utilities. There is no feature in this bill more questioned than the manner of arriving at the valuation, for if the rates are to be based on value, what are its elements? Makers of the law had no greater difficulty than in trying to solve this question. "Going value," "Property used and useful," "Cost of the service" are technical and difficult to define. It will be a long time before all the points in this matter can be worked out satisfactorily to the accountants and the public. How fair the commission have tried to be is seen by the following excerpt from an address by Chairman John H. Roemer:—

"There is a tendency on the part of some to regard the reproductive cost less depreciation as the only proper basis of capitalization upon which returns should be computed. This, in most instances, would be so unfair that it could probably not be sustained if assailed upon constitutional grounds. Old enterprises, which

have yielded large profits for many years, could not justly complain if their returns should be based upon the present fair value of their physical structure, but when the losses incurred in the developing period of the business of any public utility have not been requited, it would be doing grave injustice to the investors in such concern to so limit the returns upon the capital actually and prudently sunk in the enterprise under economical administration. We have taken the position, in certain cases, that the losses necessarily incurred in building up the business during its formative period are a legitimate charge against the public and should in such instances be considered in fixing rates. It is my personal opinion that unearned depreciation, unearned interest on the investment, and any operating charges that have not been paid out of operating revenues, from the inception of the enterprise until it reaches the point where the operating revenues are sufficient to pay fair returns on the legitimate investment, are generally as much a part of the value of the active property as interest, taxes, insurance, and other fixed charges incurred during the period of construction. The former may often be computed accurately from the records available and constitute the cost of establishing the business on a profitable basis. It is, in fact, the cost incurred in converting the property from a static state to a dynamic state, and forms the monetary measure of going value. Whether the full amount of such losses should be allowed in any given case, depends upon all the facts and circumstances surrounding the same."

The law provides for a system of uniform accounting, especially for construction and depreciation accounts. It is generally thought by the men who drafted this bill that these as well as publicity features were necessary protections to the public against the commission.

Then, again, the municipalities indirectly will have technical help given to them, which otherwise they could not afford. A permanent staff of experts is thus provided so that the municipality can tell upon what basis the commission places its rates. The law also provides for schemes which will be stimulants to corporations, such as sliding scales and other devices of this kind, merely, however, allowing the commission to pass upon these scales. The depreciation accounting was received with open arms by the managers of the companies. The greedy stockholders in a company would press the managers for a higher rate of dividend, who were thus often between the devil and the deep sea. In many cases if they gave this higher dividend they would have to do so from the depreciation fund of the property, whereas, if they did not give it, they were often threatened with dismissal. In this manner both the avaricious stockholder and the crooked politician who would make the same demands of municipal enterprises have been regulated by this law. The commission has just demanded that the city of Milwaukee set aside $35,000 for a depreciation fund for its municipally owned water works.

One of the most debatable parts of the law is the indeterminate permit. The men in favor of this bill had a hard struggle to include this feature. The fixed period had become so popular and there had been so

many battles over it that it was very hard to convince the legislature that, if the stocks and bonds were terminated at a certain point, the consumers would lose in the end by the term franchise, as the consumers would have to provide for an amortization fund. Under the Wisconsin law corporations were permitted to surrender their franchises and receive an indeterminate permit. It was felt by the authors of this program that with entire publicity and power to fix the service conditions, this was a safe basis upon which to go and would be the cheapest in the long run.

Judge Marshall of the Wisconsin supreme court in a case involving the validity of this part of the act says: —

"The confusion created during the years preceding the public utility law of 1907 by granting franchises in several different ways, — some directly by the state, some by cities as state agencies, some by the state in the main but with power to the various municipalities as state agencies to add supplementary features, fitting particular situations, some by the state without regard to local police regulations, and some likewise having such regard, either expressly or by necessary implication, some having contractual features creating doubt in regard to their constitutional status, and some having such features but without doubtful character, many of such matters being, in the ultimate, more or less detrimental to consumers, whether public or private, and proprietors as well, — in the whole, created a perplexing situation in respect to harmonious administration. The legislature sought to deal efficiently with this mixed situation, the growth of years, by taking over existing franchises with the consent of owners, compensating them

for coöperating to that end by conferring in each case of surrender a new franchise to do the things privileged under the old one with conditions referable only to the law itself, and so providing that subsequent original franchises conferred in whole or in part through state agencies would be likewise referable. The traffic thus sanctioned and invited as to existing franchises has been considerable and, as said before, with definite mutual ideas as to the status resulting from the exchange. The property interests involved have doubtless been very great, the persons directly and indirectly interested large, and the transactions numerous as well. Obviously, any construction of the law running counter to the general view entertained in such transactions should be avoided if practicable.

"If we concede, for the case, that, in a reasonable view, the public utility law is ambiguous, looking only at its words, we cannot well so say in the light of the situation the legislature dealt with, as indicated, and the new condition which was evidently desired. It is evident the aim was to displace existing public utility franchises of the nature of those mentioned in the act, so far as that could justly be accomplished, by new direct grants from the state of a uniform character, free from the peculiarities of old franchises, prejudicial to the dominant end in view; the best service practicable at reasonable cost to consumers in all cases and as near a uniform rate for service as varying circumstances and conditions would permit; a condition as near the ideal probably as could be attained.

"It is useless to extend this opinion further for the purpose of picturing the situation dealt with by the legislature. The magnitude of the task was great. Few, if any, greater have been dealt with in our legislative history. The result stands significant as a monument to legislative wisdom. That such a complicated

situation has been met by written law in such a way as to avoid successful attack up to this time on the validity of the law or any part of it, and avoid attack at all either upon the law or its administration, except in a very few instances, and secure optional submission by many owners of old franchises to a displacement of their privileges, — is quite a marvel; reflecting credit upon the lawmaking power and the body charged with the onerous duty of administering the statute, and challenging judicial attention to the importance of not, by construction, reading out of the enactment any meaning not clearly found there, — even to avoid a seemingly unlooked-for disturbing consequence in a particular instance now and then, — which would tend to defeat the object of the law. The words of the enactment, dealing as it does with vast private and public interests, should, if practicable, be given a meaning so definite and comprehensive as to prevent any attempt to restrict it or extend it so as to continue or renew or promote the detrimental consequences it was aimed to abolish and prevent."

The corporations did not at once avail themselves of the privilege of exchanging their franchises for the indeterminate permits, but by a law of 1911 they are compelled to do so. Says Chairman John R. Roemer in a recent address: —

"This apparent reluctance to make the change, although contrary to the anticipation of the legislature which passed the law, was not due to any apprehension on the part of the managements that the indeterminate permits were less valuable to the corporations than their secondary franchises, but rather to a doubt as to the power of the corporations to surrender privileges which had been hypothecated to secure outstanding bond issues. Thus, most

of the surrenders were made by corporations who were able to secure the consent of the bondholders or who were able to retire or refund their bond issues. It was very evident that many years would be required to carry out the purpose of the law respecting uniformity of franchises throughout the state, and, hence, the recent legislature, acting under the power reserved in the constitution to alter or repeal corporate franchises, and under the police power, amended every franchise, making it an indeterminate permit. So at present, assuming the validity of the act converting all franchises into indeterminate permits, there is uniformity in franchises throughout the state, and, in consequence, all public utilities are subject to all the provisions of the Utilities Law."

The Wisconsin law comes out boldly on the point that unnecessary competition costs excessively in the long run and should be eliminated, if possible, especially if other incentives resulting in the betterment of service can be maintained. In fact, the whole idea of this kind of legislation is a frank recognition of monopoly. By chapter 454, laws of 1907, no railroad corporation, which includes street railways, may begin the construction of any line without receiving a certificate of convenience and necessity. Right in line with the same policy are laws to provide for the common use, at a reasonable compensation, of facilities such as poles, conduits, etc.

The municipal ownership law too has been strengthened. By using the threat of municipal ownership as a club, municipalities may buy the plants of the companies at a price fixed by the commission. As a general thing,

it was felt by the men responsible for this regulation that service was the first thing to be sought and if proper service could be attained with a fair return to the corporation, that was all that was necessary. They depended upon publicity and valuation as clubs to achieve this service under these conditions; there is no doubt but that municipalities have a hard time convincing people that they should purchase plants, but the law is so arranged that besides the regulation pursued by the commission, there is constantly hanging over public service corporations the purchase clubs used in connection with the indeterminate permit. It will be remembered that municipally owned plants and private plants are under practically the same terms of control.

Nothing in this law has excited greater interest nor greater antagonism than this very question of home rule and the relations in general to municipalities. When the public utility act was first proposed there is no doubt but that the public utilities of the state thought they would gain by placing in the hands of some kind of a weak commission, a power which would protect them from the localities. They were constantly in fear of the encroachments of municipal ownership and the concerns which were granted spurious franchises in so-called competition. The outcry was great from the localities but the law was sustained by public sentiment. The friends of the bill answered that the small cities had

neither the administrative machinery nor the technical means necessary to discover the conditions and that the centralizing of technical skill which could be of use to all was the only safety for the community — at least for the present.

It is well to note here that the municipality retained the right to compel reasonable extension and good service and to provide ordinances for that purpose, subject to an appeal to the commission as to their unreasonableness.

Public Utility in Relation to Municipalities

The peculiarly defenceless position of the ordinary small municipality and the relation of the public utility

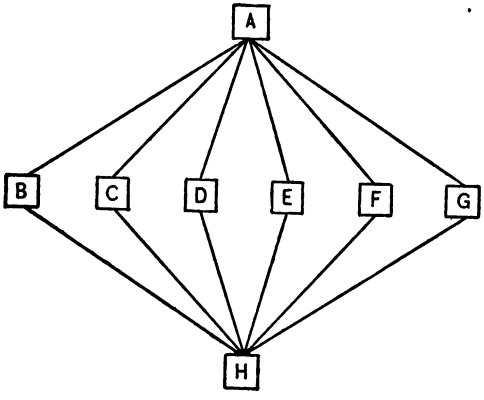


DIAGRAM IV

commission to the whole question of the control of public utilities is illustrated by Diagram IV.

Let *A* be a large gas syndicate having an accounting system that shows every item of the cost of the business. It has scientific experts, technical engineers and a general concentration of intelligence and ability and scientific knowledge; it has a central administrative office. It has also in its employ experts on the legal side of the question, men who are accustomed to investigating the law in all matters relating to this work.

Let "*B*" be a small town which has a gas plant. "*B*" complains that the gas is of poor quality or too costly. What chance has "*B*" in fighting this great combination of science and legal ability? Why, "*B*" would not even know how to obtain the first expert; it would have neither offices nor organized force to conduct the fight; it could not examine the books of "*A*"; it would be woefully handicapped in its struggle.

Let the Wisconsin railroad commission be illustrated by "*H*." The little town "*B*" can go to "*H*" and ask for its help. "*H*" is the state seeing to it that one of its minor branches has fair play. It has a permanent office, a permanent staff of experts, it has the accounting and the legal help to withstand the attacks of "*A*," and until "*B*" acquires strength enough to maintain the same staff of accountants and expert help, legal and otherwise, as "*H*," the theory is that it is far better for "*B*" to have "*H*'s" help than to remain in this fight alone.

In discussing this matter Senator Hatton has the following to say: —

"While the state has the power to absolutely control all public service corporations, it is well to bear in mind that local municipal government, in so far as practicable, is the true policy to pursue and wise state supervision, when dealing with public utilities situated within the corporate limits of cities, will emphasize this principle rather than ignore or override it. The initiative in all local public utility matters should remain with the local authorities. The right to review and regulate should be assumed and exercised by the state.

"There is an intermediate field between absolute control and dictation by the state and absolute municipal control and dictation by the city council. This intermediate field is the proper sphere for the activities of the state commission in regulating the public service utilities situated wholly within the limits of cities. The commission will then occupy the position of a disinterested tribunal rendering expert service, doing that which is not practicable for the local authorities to do, such as valuation of plant, uniform accounting, reviewing and acting as arbitrators in matters of rates and in all other disputed matters arising between the municipalities and the public service corporations.

"Thus the commission becomes an efficient aid to local control. It enlists active public interest through publicity, thus bringing to bear upon the subject the powerful controlling influence of intelligent public opinion. It renders assistance to local authorities by furnishing reliable data for use in dealing with the utility corporations direct, or in legal contest with it in the courts."

Professor John H. Gray, a recognized authority on such subjects, has said: —

. "We cannot discuss, for want of suitable data, the economic problems connected with gas supply. We lack completely data for a discussion of the question now talked about so much, namely, public ownership."

Professor Frank J. Goodnow of Columbia university says:—

"The development of any science of municipal administration is rendered practically impossible because of the absence of all reliable data."

Despite the forebodings of those who believed that the law would keep localities from establishing municipal plants or buying those already in existence, that it is still possible to take over municipal enterprises is shown by the fact that three water companies have been acquired by municipalities and a gas and electric light company is just about to be taken over, while two other cities have applied for permission to purchase water works and will doubtless do so in the near future. If municipal enterprises can be bought in this manner in spite of the tremendous debt limit of cities, it shows that the municipal ownership is somewhat of a club outside of any regulation by the commission.

The simple, clean-cut procedure existing in the railroad commission act was copied in this law almost without change.

Stock and Bond Law

The stock and bond law is not as great a necessity in Wisconsin as it would be if there was not physical valuation. With physical valuation and a rate based upon it and other elements accompanying it, if a company is greatly overstocked it will have to suffer. As far as the consumer is concerned a stock watering law would be of little concern. Of course that is not true regarding the stock and bond holder. However, the new stock and bond law which applies to every public service corporation has the same elements in it which are in evidence throughout this legislation, that is, using the device of reasonableness as a standard enforceable by the commission. The following sections from that law will illustrate this: —

"*Issue not to exceed amount reasonably necessary.* Section 1753–4. No public service corporation shall hereafter issue for any purposes connected with or relating to any part of its business, any stocks, certificates of stock, bonds, notes, or other evidences of indebtedness, to an amount exceeding that which may from time to time be reasonably necessary for the purpose for which such issue of stock, certificates of stock, bonds, notes, or other evidences of indebtedness may be authorized.

"*Issues for money only; commission's certificate.* Section 1753–9. 3. If the commission shall determine that such proposed issue complies with the provisions of this act such authority shall thereupon be granted, and it shall issue to the corporation a certificate of authority, stating: (*a*) the amount of such stocks, cer-

tificates of stock, bonds, notes, or other evidences of indebtedness reasonably necessary for the purposes for which they are to be issued, and the character of the same; (*b*) the purposes for which they are to be issued, and (*c*) the terms upon which they are to be issued. Such corporation shall not apply the proceeds of such stock, bonds, notes, or other evidences of indebtedness as aforesaid, to any purposes not specified in such certificate, nor issue such stock, bonds, notes, or other evidences of indebtedness, on any terms not specified in such certificate.

"*Consolidations; commission's valuation first required.* Section 1753–11. 2. No public service corporation shall purchase, directly or indirectly, or in any way acquire the property of any other public service corporation or of any person furnishing service to the public, for the purpose of effecting a consolidation, except that the property of such corporation or person shall first be valued as provided in subsection 5 of section 1753–9 of the statutes, and then only at a sum not to exceed the value found and determined by the commission and stated in the certificate of authority issued to such corporation for the issuance of stocks, certificates of stock, bonds, notes, or other evidences of indebtedness."

The commission is given the authority to determine in a scientific way whether certain issues are or are not reasonable, and is also given full power of supervision. It was a difficult law to draft and it may be said to be largely experimental. The court decisions throughout the country have involved the stock watering situation to such a degree that it is very hard to delegate power to a commission, and it is very probable that this stock and bond law goes as far in this matter as the decisions

of the courts will permit. The fixing of rates within the state is an easy thing compared with the complex problem of trying to place a valuation upon the assets and expansion and absorbing power of a corporation existing in several states.

Insurance

The development of insurance legislation under the able management of Herman L. Ekern, the present insurance commissioner, has been remarkable. It will be observed that the same principles run through insurance legislation, *i.e.* that the contract conditions must be made plain, the accounting given the proper publicity, the business made public and the cost as cheap as possible, involving as little litigation as possible. No attempt has been made to develop this department to the point reached by the railroad commission act, but the foundation evidently has been laid for a thorough control of the company and the protection of the individual which is assured under the other act. With the introduction of industrial accident insurance, the department bids fair to develop into as great an institution as the railroad commission. Certainly as time goes on, it will have to assume some position similar to that of the German department if the kind of legislation which is now being undertaken continues to be enacted. It is the intention of the legislators to make the office of the

insurance commissioner as important as any in the state. It has been gradually recognized that the problem of poverty and its prevention must centre to a large degree around the question of insurance.

The advance in insurance legislation cannot be better described than in the words of the commissioner himself. Says Mr. Ekern: —

"The idea underlying the insurance legislation of Wisconsin is that the policy-holder is entitled to have placed before him in intelligible form the exact facts with regard to his insurance, and to insist that the companies shall, in every respect, live up to the true spirit and intent of their policy contracts, and that insurance should not be permitted where the expenses exceed a legitimate proportion of the insurance benefits furnished.

"The Wisconsin laws limit the amount which may be added to the premiums of life insurance companies for expenses, and limit the expenses to the amount so collected. The effect of the first requirement has been to lower insurance premiums in this state in some instances as much as $5.54 per $1000 of insurance per year; and the effect of the latter has been to reduce the expenses generally of insurance companies doing business in the state, so as to enormously benefit, not alone new policy-holders, but old policy-holders, in both their annual and deferred dividends. The money which companies heretofore took from the savings of old policy-holders to pay extravagant commissions and other expenses are now being returned to the policy-holders to whom they belonged.

"The Wisconsin law requires that every stock company annually relicensed in the state, which purports to transact a participating business, shall file a statement setting forth the share

of the policy-holders and the stockholders in the accumulated surplus. It was this requirement which was responsible for the withdrawal of the Union Central Insurance Company of Ohio from Wisconsin. It was fully justified by the subsequent action of the company in apportioning to its stockholders almost half a million dollars of surplus which the courts of Ohio finally held they had no power to prevent.

" This law was also, in part at least, responsible for the withdrawal of the Equitable Life Assurance Society of New York, which, notwithstanding it has in its charter a provision that dividends shall be paid above 7 per cent still finds its one hundred thousand dollars of stock valued in the millions.

" The new law further provides that a statement shall be given to every annual dividend policy-holder every year telling him of the gains and savings of the company during the year from death claims, interest and expenses, and the proportion and amount of each returned to him in dividends in dollars and cents in a manner which he can understand. The interests of deferred dividend policy-holders are safeguarded by requiring an apportionment of the accumulations to any individual policy-holder, and that on request he shall be informed of the amount so apportioned to his credit.

" Provision is also made for a system of electing the directors and officers in mutual companies of the state, which assures the control to the policy-holders, whenever occasion arises for a change of control. The salaries of officers in mutual life insurance companies is limited to $25,000, unless the policy-holders vote a larger amount. Statements are required as to all legislative expenditures and political contributions prohibited. The sale of stock in life insurance companies is prohibited, unless the contract informs the purchaser of the amount of his money to be expended for the pro-

motion of the company. The law now makes possible the organization of new life insurance companies on a sound and legitimate basis, and later amendments permit the organization of mutual companies for the insurance of employers against their liability for the injury or death of employees and for the insurance of deposits by banks.

"One mutual employer's liability insurance company is already doing business and others are about to be organized. A committee of the State Bankers' Association is at work formulating a plan for the organization of a bankers' mutual insurance company for the protection of depositors. Provision has been made for the granting of life insurance and annuities by the state in the state life fund on an absolutely safe plan of collecting a sufficient advance premium and returning the savings. The same idea has been extended to fraternal insurance by providing for helping the fraternal societies to find out where they stand and to get this information out to their members in the most intelligible form and to bring about as much as possible a more general knowledge of the real principles upon which insurance is based. In all this legislation there are no arbitrary requirements, save only in prohibiting the collection of expense money in excess of a definite proportion of the insurance benefit to be furnished. In other respects, the idea is merely to insist that the policy-holder shall understand his contract and the principles on which it is based and the conditions under which it is made, and that the company shall live up to the contract."

More interesting because more experimental, is the state insurance fund passed as chapter 577, laws of 1911. The following outline of this law, taken from an address delivered before the National convention of insurance

commissioners at Milwaukee, Wisconsin, August 23, 1911, by Mr. Ekern, commissioner of insurance, gives an insight into the state life fund.

" The Wisconsin Legislature of 1911 established a ' Life Fund ' for the purpose of granting life insurance and annuities to persons who are within the state or residents thereof. This is to be administered by the state without liability beyond the fund. The state treasurer is charged with the care of the assets. All other matters relating to such funds are under the supervision of the commissioner of insurance.

" Policies may be issued to persons between the ages of twenty and fifty years. Life insurance may be granted in sums of $500 or multiples not exceeding $1000 until the number of insurants exceeds one thousand, and not exceeding $2000 until the number of insurants exceeds three thousand and not in any event exceeding $3000. Annuities may be granted to begin at the age of sixty years or over in sums of $100, $200, or $300. The same policy may combine both a life insurance and an annuity.

" The statute fixes the premium which for life insurance must be based upon the American experience table of mortality, with additions for extra hazards, and with interest at three per cent, and with an addition for expenses and contingencies amounting to two dollars per year per thousand dollars of insurance and one-sixth of the value of the insurance distributed equally through the premium payments.

" The basis for annuity premiums is the British offices annuity tables, with interest at three per cent, with a like one-sixth addition for expenses.

" There must be a medical examination on every application for life insurance. The medical examiner receives a fee of two dollars

paid from a deposit made by the applicant. No commissions or fees are paid to any person, except that the person transmitting an application, whether the insured or any other, is entitled to deduct a fee of twenty-five cents from the initial premium payment and any person transmitting any premium may also deduct a fee of one per cent of the premium. These deductions are made by the insured when he transmits his own premium. Every application must be accompanied by a premium for at least three months. The state board of health and the commissioner of insurance pass upon the applications for insurance. If the application is rejected, the deposit is returned less the fees. If accepted, the premium is paid to the state treasurer and a policy issued signed by the commissioner of insurance and the state treasurer.

"Loans may be made to an amount which with interest does not exceed the reserve. On the nonpayment of a premium the sum is charged as a loan so long as the reserve is sufficient. The whole or any part of any loan may be repaid at any time. The policy may be surrendered for cash on any anniversary, after six months' notice in writing. Losses and other payments are passed upon by a board consisting of the state treasurer, attorney general and commissioner of insurance and audited by the secretary of state.

"Provision is made for a surplus to be made up from fifty per cent of the savings and earnings during the first year of all policies issued and from a contribution reduced by 5 per cent each subsequent year until the ninth year, and thereafter the contribution to the surplus is 10 per cent. All the remaining surplus is distributed annually to the policy-holders, beginning the first year and continuing every year while the insurance is in force.

"The accounts are kept by the commissioner of insurance and audited as the accounts of other state officers. Valuations and

reports are required the same as from life insurance companies. The bonds of the state treasurer, the commissioner of insurance, of all county, city, village, and town treasurers, and of every state depository, must include a liability for all premiums and other money received for the life fund. Investments may only be made as provided for life insurance companies. The commissioner is given two years to put the act into effect."

Another decided advance toward state insurance was taken when a state insurance fund to provide for fire loss on state property was created. The provisions of this act were extended by chapter 603, laws of 1911, to cover the property and buildings owned by counties.

Directly in line with the general principle that appointive experts should administer the law and correlated with the short ballot propaganda is chapter 484, laws of 1911, making the insurance commission appointive for a four-year term instead of elective. That the legislature took care to restrict the political activity of any commissioner may be seen by the following excerpt from the law:—

"Section 1966y. 2. The person so appointed as such commissioner shall be known to possess a knowledge of the subject of insurance, and skill in matters pertaining thereto. No person appointed as such commissioner shall hold any other office under the laws of this or of any other state or of the United States. Such commissioner shall devote his entire time to the duties of the office, and shall not hold any position of trust or profit, engage in any occupation or business interfering with or inconsistent with his

duties, or serve on or under any political committee or as manager of any political campaign for any candidate or party."

At the present time there is a committee of the legislature investigating the question of fire insurance. The contracts and conditions of fire insurance need examination, and it is not improbable that legislation will be recommended by this committee along the same general lines as prevail through the whole regulative plan. The private board of fire insurance companies fixes a certain rate for fire insurance. If one thinks that rate extortionate, or therefore wrong, what appeal has he? It is simply a question of contract, and he can accept the insurance or not, as he chooses. This seems to be the argument of the legislature. It is quite probable that fire insurance will also be recognized by legislation as a business affected with a public interest to a greater extent than it has been formerly.

Taxation

The tax commission was the earliest of the great commissions to be formulated in Wisconsin, being created by chapter 206, laws of 1899. It consists of three appointive members and has a joint arrangement with the railroad commission for the use of experts in the rating of property. Gradually all the great corporations have been placed upon an *ad valorem* basis, so that here, too, physical valuation, with all of its advantages, is basic.

As has been pointed out before, the fact that the *ad valorem* system of taxation was applied to railroads precipitated the railroad rate fight in 1903. If railroads were taxed without being regulated as to rates, it was felt that the burden would be shifted to the public.

The commission has great powers, through which a centralized and uniform state-wide system of taxation has been built up. Local assessors are checked by county supervisors of assessment, who in turn are carefully instructed by the commission. The money collected is retained by the state or apportioned to the localities on a percentage basis. The whole work is based upon actual valuation, and a large corps of engineers and experts is employed for this purpose. The law and its methods have been copied by many states.

Railroad Taxation

The tax commission makes an annual assessment of all property of railroad companies within the state on the basis of cost of reproduction (new) minus depreciation. The definition of property includes all franchises, rights of way, road bed, tracks, terminals, rolling stock, equipment and all other real and personal property of a company used in conducting the business, but excludes real estate not adjoining the tracks, stations or terminals; grain elevators and coal docks, ore docks, and merchandise docks, and real estate not necessarily used in operat-

ing the railroad are excepted, and shall be subject to taxation like the property of individuals. The true cash value of the railroad property is found by the tax commission (chapter 315, laws of 1903). When the value of railroad property has been ascertained, the statute provides that the returns from all the taxes of the state for state, county and local purposes, except special assessments on local improvements, shall be aggregated by the tax commission. From the aggregate of the true cash value of the general property of the state as found by the tax commission, and the aggregate amount of taxes, the board computes the average rate of taxation, which rate so arrived at, constitutes the rate of taxation of all railroad property. The rate is applied to all railroad companies and is to be paid to the state treasurer at stated intervals, and become a part of the general fund for the use of the state.

On the same basis telegraph companies, express companies, sleeping car, freight line and equipment companies are assessed by the commission on the actual value of the property in the state, subject to assessment with such change as the character of the property requires. All money so collected is part of the general fund of the state.

Chapter 493, laws of 1905, provides for the taxation of the property of street railways, and electric light, heating and power companies, operated in connection with

street railways according to the valuation in substantially the manner as in the act for the *ad valorem* valuation of steam railroads. All other public service companies not so operated come under the general assessment laws, and taxes therefrom are turned over to the localities. The entire tax from this source is paid to the state treasurer, and 85 per cent is audited and paid back to municipalities. Fifteen per cent (15 %) of the tax is retained by the state and 85 per cent is distributed to the localities through which the lines are operated in proportion to property located and business transacted within the several towns, villages and cities, through which the lines run. Street railways are also taxed at the same rate of taxation as railroad property.

Income Tax

Under its administration have been placed the new income tax law as well as the graduated inheritance tax law. Both of these acts have special expert men for the sole purpose of enforcing them. The income tax deserves some slight mention.

This law (chapter 658, laws of 1911) is now exciting much discussion in the state, and public opinion is quite evenly divided as to its wisdom, but seems to be slowly becoming friendly — perhaps as quickly as can be expected for an act of this kind in an American community. It is an honest attempt to supplant the personal property

tax in an equitable manner. A pamphlet issued by the tax commission prints this section with the following comment:—

"*Personal property tax receipts may be offset against income tax when*

"Section 1087m-26. Any person who shall have paid a tax upon his personal property during any year shall be permitted to present the receipt therefor to, and have the same accepted by, the tax collector to its full amount in the payment of taxes due upon the income of such person during said year. Any bank which has paid taxes during any year upon its shares assessed to the individual stockholders thereof shall be entitled, under the provisions of this section, to present the receipt therefor, and have the same accepted by the tax collector to its full amount in the payment of taxes due upon the income of such bank during said year.

"This section is construed to mean that if a person or corporation has paid a personal property tax, say for the year 1912, the receipt for such tax may be presented to the tax collector in payment of income taxes which have become *due* in said year. The 'taxes *due* upon the income of such person during said year' are taxes which are based upon, and the amount of which is determined by, the income of the preceding year. It would therefore follow that the year referred to is not the year in which the income is received, but the year in which the income tax becomes due. In view of the fact that the exemption of intangible personal property provided for by this law does not take effect until 1912, it is believed that the intention of the legislature was to limit the operation of this section to personal property taxes of 1912 and thereafter. This view is strengthened by the next section, which provides that all taxes assessed in 1911 shall remain unaffected by this law.

"The general character of the law and the circumstances attending its adoption leave no doubt that the income tax was intended to be very largely a substitute for the tax on personal property; and in pursuance of this policy, stocks, bonds, money and other important classes of personalty are exempted from taxation *after 1911*. This exemption was in exchange for or in consideration of the imposition of an income tax; and until the income tax becomes operative the exemption has no force. Accordingly a tax on personal property assessed and levied in 1911, but paid, say on January 10, 1912, cannot be used to offset an income tax assessed in 1912 and paid, say on December 30, 1912. In other words, the two assessments must be of the same year. To hold otherwise it is believed would amount practically to making the exemption of stocks, bonds, moneys, etc., take effect one year earlier than the date specifically set by the legislature.

"For analogous reasons taxes paid on personal property in other states cannot be used to offset the income tax of this state. A tax paid on personalty in one assessment district, however, may be used to offset an income tax in another district."

The rates are low, the exemptions reasonable and 70 per cent of the revenue will go into the local treasury. The wording of the administrative portion is very strong with centralization in the tax commission. The assessors will be selected under civil service and no pains have been spared to make the act enforceable and equitable to a high degree. Perhaps no other state in the Union could attempt to install machinery of this sort without political wire pulling or favoritism. This part of the law reads: —

"*Assessors of income — how appointed.*

"Section 1087m-8. 2. Not less than thirty days prior to the first of March, 1912, there shall be selected and appointed by the state tax commission an assessor of incomes for each assessment district in the state, who shall hold office for a term of three years unless sooner removed as hereinafter provided. Such assessor shall be a citizen and an elector of this state, but need not be a resident of the district in which he is appointed to serve; provided, however, that so far as practicable, preference shall be given in making such appointments to residents of the districts."

Moneys, debts due and to become due, all stocks and bonds not otherwise specially provided for, are exempt from taxation. The law was declared constitutional on January 9, 1912, by the Wisconsin supreme court. Its advocates do not claim perfection for it; they admit that it is experimental but fundamentally right.

Educational

For common school purposes there is a $\frac{7}{10}$ mill tax levied on general property of the state as determined by the tax commission, exclusive of the property of corporations which pay fees or are assessed by the state board.

For the support of the university there is a tax of $\frac{3}{8}$ of a mill upon each dollar of assessed valuation of general property of the state, as determined by the commission (chapter 631, laws of 1911). Under the same law there

is annually levied and collected for the normal school fund income, $\frac{1}{6}$ of one mill for each dollar of assessed valuation of taxable, general property of the state as fixed by the tax commission.

Banking

The state has a strong banking code developed with great care. It gives general satisfaction, provides for the utmost publicity and care in its control and in line with all Wisconsin legislation, it recognizes banking as a business affected by a public interest. It does not permit private banking which has proved so pernicious in other states. All banks must be public under this act. The result has been that not a citizen of the state has lost a dollar through the state banks since it was enacted into law.

CHAPTER IV

Electoral and Governmental Changes

The Primary Election

The Wisconsin primary election law, defective as it has been, has perhaps been more examined, criticised and discussed than any other of its kind.

The reason for the primary is obvious. The pressure brought to bear on conventions by the great economic forces which dominated this country aroused public sentiment and made it necessary to have more direct means of nomination.

Whatever may be the defects of the direct nomination of candidates, it must be said that with organized and vigilant monopolistic power in existence, a system, by which a few men gathered together to select others who, in turn, selected others as candidates, was so complicated and presented so many opportunities for influence or corruption that it had to go. As a business device it would go wrong, as there was absolutely no way of fixing responsibility. The uneasiness felt by the people because those who determined its policies did not represent the real sentiment, had to be pacified in some

way. It was felt that the primary was the means for combating the secret intrigue which skilled corporation employees could sustain in a caucus and convention system. From this point of view it was absolutely necessary and fundamental if any plan for the efficient control of the great dominating influences could be carried out.

The law was unfortunate in its passage. Several bills were discussed all of which were more or less defective. Finally without due amendment and discussion as to details, the enemies of the bill agreed suddenly to let one of these bills be submitted to the people. For several years it was practically impossible to amend it in the slightest degree. Any proposition to amend it was at once defeated with the explanation: this law has been passed by the people; let us wait and see how it works before we amend it.

Therefore it had defects which were very serious ones. However it has since been amended and seems destined to remain on the Wisconsin statute books. There are those who believe that some of the state officers should not be included in the primary law. Without a short ballot, it is difficult to judge of the fitness of a secretary of state, a state treasurer or an attorney-general. Fortunately there are very few such officers in this state, but in the opinion of many who have studied the question well, in those states which

have a multiplicity of elective state officers there may be further justification for the above criticism. The remedy may be in the short ballot principle. In the opinion of the writer, the offices of secretary of state, state treasurer and attorney-general should be appointive. The position of insurance commissioner was made appointive in Wisconsin in 1911. There is no question but that the primary election law should have been followed at once by a corrupt practices act limiting in some way the amount of money to be spent, but it was impossible to enact such a law at the time the primary law was passed. The primary has sometimes proven too costly because of this grave omission, but the fault lies not with the friends of the primary as they soon saw its defects and session after session tried to remedy them.

It is evident that the Wisconsin legislature is, on the whole, improving from year to year. There are not as many brilliant leaders as formerly but neither are there as many stupid or corrupt men. The primary seems to elect a middle class average man of independence and intelligence. The old system tended to elect either brilliant, well-known men or those who were merely pawns in the game. Under the primary, individuals announce their intention of becoming candidates and fearlessly run for office. Legislators have often admitted to the writer that they would not attempt to

run for office under the old system. No one has to ask for that privilege now. Bagehot, in his "History of the British Constitution," somewhere says that the best government is that in which there is a limited number of real aggressive leaders and a great many who are willing to be led. He points to England as a country of this type. The writer does not agree with that philosophy, but nevertheless he must admit that because of the new primary law, there is sometimes so much individualism in the Wisconsin legislature that it is difficult to promote business rapidly. There have been occasions when to some extent a lack of unison was evident. Business is not despatched as smoothly as formerly because you have to "show" every man. Each individual member wants to know about it and talk it over and he is unwilling to accept such leadership as was prevalent under the old system. The boss is not welcome now. There is more debate and more discussion but the writer considers this an exceedingly healthy symptom, for the results indicate more real intelligence in legislation.

Although the law is long and involved, it can be summarized in a very few words; the peculiar features of it require a longer description.

The most noteworthy feature of the primary election law is that it is an absolutely direct election, compulsory and state wide. It was intended to abolish the caucus

and it does. There is no caucus and there is no voting for delegates of any kind, except delegates to the national convention. Chapter 451, laws of 1903, provides for absolute secrecy and a thoroughgoing secret ballot incorporated into the primary election law. It is what is called the open primary, that is, there is no test of party affiliation. This latter feature is still under fire and has been subjected to great criticism, but the chances are that any attempt to repeal it would be defeated by at least 4 to 1 in the state. Those who favor it justify their attitude on the basis that although one party may go into another party's primary and nominate its weak man, it more often happens that the independent voter will cast his vote for the person whom he considers to be right, no matter to what party he belongs. The reform and not the party seems to be the main issue in Wisconsin, and there are those who vigorously state that the badge of party loyalty has too long been a mask used in defeating the manifest will of the people.

The non-partisan spirit generally prevalent in Wisconsin helps the position of those who are adherents of the open primary and aids the accomplishment of the whole program of direct legislation.

The law applies to all elective offices, except the judges, the state superintendent of public instruction and some minor offices in towns, villages, school districts, etc. It is not generally used in small cities because it is not

very practical, although it may be applied to all cities. The exemption of judges and educational officers is characteristic of the Wisconsin non-partisan spirit.

Finally, delegates to the national convention are elected by the primary and provision is made for a statement of presidential preference.

The act also contains a provision for second choice which it is hoped will tend to produce a majority or at least something approximating a majority. This law was passed in 1911 after a hard struggle which started the moment the first bill was introduced. Its peculiar features and the philosophy behind it, need some extended discussion, as its great importance has not been fully appreciated throughout the country.

The second choice law (chapter 200, laws of 1911) is a modification of the system used in Queensland as far back as 1887.

No better argument in favor of this innovation can be given than that used by Mr. Charles K. Lush, a brilliant newspaper man and author, who has given permission to use excerpts from his pamphlet "An essential amendment to the primary law." As this pamphlet is now out of print and the discussion is so exceedingly valuable many extracts from it have been used. It must be remembered in reading it that it was written before the second choice law was passed. However, it is an explanation of what was actually later enacted into law.

"It is the principle that the nominee of a political party should represent the party principles or policy of the majority of the voters of the party. It prevents the possibility of a man representing the principles of only one-fourth of the voting strength of the party being nominated as the candidate of the party, and in direct conflict with the views of three-fourths of the voters of the party. It was the recognition of this principle that caused the conventions to nominate by majority vote of the delegates instead of by plurality. The present Wisconsin primary law prevents a number of candidates representing the majority sentiment as to party principles from coming into the field as candidates for the nomination for fear the candidate of a minority may be named by receiving a higher vote than any one candidate among the majority candidates. The present primary is, in effect, a convention to which every voter is a delegate and in which the candidate receiving the most votes on the first ballot is the nominee. The remedy lies either in the adoption of the second choice amendment . . . or by return to the convention system.

"An effort has been made to make it appear that the second choice system is very complicated. The voter casts one vote for

BALLOT

For Governor	First Choice	Second Choice
Adams		
Brown	X	
Black		
White		
Gray		X

a candidate as his first choice and another for the man whom he would like to see nominated if his first choice cannot be nominated. So far as the voter is concerned there is no complication.

"Delegates who attend state conventions do not find it complicated to vote for their second choice after they find that their first choice cannot be nominated.

"A diagram of the tally sheet, and of the checking and computing blank will make the second choice proposition clear.

"Following, is the official tally sheet upon which the first and second choice votes are entered, being called off in this case: 'For Governor, Brown first, Gray second.' Supposing the ballots of one precinct have been called off, the sheet shows as follows: —

FOR GOVERNOR — OFFICIAL TALLY SHEET

FIRST CHOICE		SECOND CHOICE			
	ADAMS	BROWN	BLACK	WHITE	GRAY
ADAMS 25			15	10	
BROWN 48	15		25		8
BLACK 20		15		5	
WHITE 55	7	10	30		8
GRAY 17		15		2	

"Carried down the first choice vote, or first ballot of the 'convention' is as follows: —

Adams	25
Brown	43
Black	20
White	55
Gray	17

"There being no majority on the count of first choice votes cast, and Gray being the lowest man, he is beaten and out of the race, so those who voted for Gray are entitled to have their votes counted for their second choice, making the result as follows: —

Adams	25		
Brown	43	15	58
Black	20		
White	55	2	57

"Black is now the low man, and the men who voted for him as their first choice are entitled to have their second choice votes counted for their second choice. Repeated as above brings the following result: —

Adams	25		
Brown	58	15	73
White	57	5	62

"There are now only Brown, White and Adams left, and Adams, being defeated and low man, his adherents are entitled to express a second choice and their votes are counted, making the final result as follows: —

Brown	73	0	73
White	62	10	72

"It will be seen by studying the above table that Brown made no gain on the final 'ballot' for the reason that none of the

25 voters who voted for Adams for first choice voted for Brown for second choice. Ten of them, however, voted for White as their second choice, while 15 of them voted for Black as their second choice. These 15 second choice votes are not counted for the reason that they were being counted for Adams while he was still in the race, and, before Adams was out of the race, Black was out of it. These voters simply voted for two losers. This explains why, in the above showing between Brown and White their total vote is only 145, while there were 160 votes cast in all. But 15 of these votes were cast for Adams and Black, both of whom were low men — two losers.

"This system does not always insure a majority of all votes cast but it does insure the nomination of a candidate who represents the majority sentiment of the party as regards party principles. Let us illustrate by showing what can happen under the present law, where a first choice alone counts and the high man is nominated, all of the rest being 'eliminated.' To begin with, remember that the present primary is, in effect, a party convention to which all party voters are delegates entitled to one vote on the only 'roll call' allowed. The man who receives the highest vote on this 'first ballot' (the primary vote) is the nominee of the party.

"Let us suppose there were three tariff reform republican candidates and one stand-pat republican candidate in a congressional district . . . and 3000 stand-pat republicans. At the primary the result could reasonably be supposed to be as follows: —

A — Stand-pat candidate	3000
B — Tariff reform candidate	2500
C — Tariff reform candidate	2500
D — Tariff reform candidate	2000

"By this result, which is the present system of the highest candidate being the nominee, the stand-pat republican would become the nominee of the 7000 voters absolutely opposed to the policy advocated by him. Could anything be more absurd than this?

"Now let us use this same case and apply the second choice rule by which the lowest candidate is 'eliminated' and not all but the highest 'eliminated' which is the present primary law.

"The first count of first choice votes would be as above given.

"Each voter having expressed a second choice, and D, one of the tariff reform candidates, being the low man, he would be out of the race, so the voters who voted for him for first choice would be entitled to have their second choice votes counted. Now, would they not be sure to be divided between the two other tariff reform candidates — men who represented their views on party policy? Suppose they had divided, 1500 of these having been cast for B as their second choice, and 500 for C. The final result would be: —

A — Stand-pat republican	3000
B — Tariff reform republican	4000
C — Tariff reform republican	3000

"B would accordingly be the candidate representing the views of 7000 voters, instead of A representing the tariff policy of only 3000 voters."

Mr. Lush holds that a primary law without a second choice simply fosters the power of the boss. He says:

"This boss, be his leadership for good or for evil, has the power to place candidates early in the field, and then warn other men not to become candidates on the unassailable ground that a number of candidates of the majority faction might split the vote and allow

the solitary candidate of the minority to be chosen as the party nominee. By thus naming the candidate of the majority faction of the dominant party the boss is 'all potential.'" Under the second choice law he holds that "the leader of the majority faction would have had no such power, for several men of known loyalty to the principles of the majority faction could be candidates, secure in the knowledge that those who voted for them as a first choice would give their second choice to some candidate representing the same principles and advocating the same line of legislation, thus precluding the nomination of the minority candidate. The boss or leader might still properly give his support to some one of the candidates, but it would be plainly a matter of personal preference, and not justified on the ground of safeguarding the rights of the majority to name the candidate of the party."

Under the primary, without the second choice he holds that:—

"It is necessary that the 'boss,' or leader, should 'eliminate' the candidates of the majority before the primaries are held, otherwise the candidate of the minority would be the nominee of the party. Under the second choice feature . . . the voters do this 'eliminating' at the primaries. Until this opportunity of selection is placed in the hands of the people there can be no true representative government."

No election has yet been held under the law. Its opponents have shown many diagrams to the effect that it will produce quite the opposite effect from that intended. In a newspaper election held by a Milwaukee paper the voters seemed loathe to use the second choice

at all. The opponents of the law claim that it cannot be understood by the average voter, that it will cause all kinds of mistakes and will require a long time to tabulate results. Its supporters admit this last contention but maintain that it is not serious and that the tally sheets inserted in the law will make it easily and correctly counted by men of fair intelligence.

There was added to the primary at the 1911 session, a presidential preference law (chapter 300, laws of 1911).

"*Section 11–26. Names of candidates for president and vice-president may be placed on ballot.* 6. For the purpose of enabling every voter to express his choice for the nomination of candidates for president and vice-president of the United States, whenever there shall be filed with the secretary of state a petition as provided by section 30 of the statutes, the names of such candidates shall be certified to the county clerks, and shall be printed upon the official party ticket used at said election. No signature, statement, or consent shall be required to be filed by any such candidate."

Corrupt Practices

Before the law of 1911 was passed, Wisconsin had no limitation on corrupt practices except stringent laws as to bribery and contribution of campaign funds by corporations. It cannot be said however, that it was not without defences from corruption. From the moment the publicity features of the railroad commission and

UNIV. OF CALIFORNIA

public utility acts went into effect, a greater caution became necessary in the expenditure of large sums influencing the elections.

Corrupt practice acts have been passed in many states and have long been in force in England. There are some things however, in the Wisconsin act deserving special attention. The act is remarkable, not only for its restrictive feature — that feature is found in many acts — but for its relation to other Wisconsin legislation. It was constructed not only with the thought of restricting the use of money but also with the idea, so often used in Wisconsin acts, of insuring equality of opportunity. Taking the Oregon scheme of using a pamphlet to get the candidates' platforms before the public as a basis, it has developed a law with a certain philosophy underlying it. That philosophy may be outlined as follows: there should be equality of opportunity in running for or in holding office; if this is denied, there arises a governing class able to control election to office through money expended, and there remains a large class which is seldom represented among candidates for office. It is the duty of the state, therefore, to equalize these conditions by not only restricting the amount of money which can be spent by the man of wealth but also to equalize conditions still further by putting means into the hands of the poorer man, whereby his ideas may be placed before the whole people.

In the words of Senator A. W. Sanborn, a member of the Wisconsin senate for many years: —

"The use of money as a factor, in determining the qualifications of a man to hold a public office, is fundamentally wrong.

"It is necessary for each voter to have sufficient information, in order for him to determine intelligently to whom his support shall be given.

"What information is necessary?

"How shall this information be furnished?

"Each voter should know who the candidate is, for what principles he stands, and what his record has been.

"This information should be furnished and placed in the hands of each voter at public expense.

"The reason for this is that our government is not based upon property qualifications for voting or holding office. It is based upon manhood suffrage; equality before the law; equality in opportunity; equality in voting power. The elector is selecting a public servant to perform public duties, and if the elector makes a mistake in this selection, he must bear the burden. It is a public duty he is performing, and the entire commonwealth is interested in having each elector receive sufficient information to perform that duty intelligently and well.

"The qualifications of two men being equal, the power of one with a large amount of money to spend, should be no greater, in securing votes, than the one without money. The amount of money the one has to spend does not add one iota to his qualifications to hold that office.

"Wherein lies the power of the man with money? He can bribe. He can influence votes with money. He can buy newspapers. He can indirectly buy the editorial columns of newspapers for the campaign. He can hire a large number of people

to work for him, which implies that they will vote for him for the same consideration. He can prevent others from being candidates for the same office. He can hire others to become candidates in aid of his candidacy. He can make himself feared and dreaded by the force of power his money gives him. He can practically purchase the office.

" He does not aid the elector in any manner in determining the qualifications of the candidates; his purpose is the opposite.

" The state is interested in securing the services of the man who is best qualified to hold the office, not the man who alone has the most money.

" If the best qualified man is poor and unable to place in the hands of the voters the necessary information, he cannot be a candidate, and hence the state is deprived of his services.

" How can this be remedied?

" *First*, Deprive the rich man of some of his powers; do away with his property qualifications as far as possible; make him stand on his real qualifications for the office.

" *Second*, Let the state aid the man who has no money to assert the power he should have to give him equality in opportunity.

" In other words, let the state regulate the power of the rich man, by depriving him of the right to use his money in securing office, and aid the poor man so as to place them as nearly as possible on an equality. . . .

" The law should name the particular purposes for which any money can be used, such as personal travelling expenses, postage for personal letters; and prohibit all uses of money for any other purpose.

" Further limit the entire amount so it shall not exceed, under any circumstances, twenty-five per cent of one year's salary of the office for which the person is a candidate.

" This will tend to give all an equal opportunity. It will, at

least, enlarge the class from which the public servants may be selected, and not limit it to persons of very large wealth only."

The following are the purposes for which money may be expended: —

"*Disbursements authorized by candidates.* Section 94–6. 1. No candidate shall make any disbursement for political purposes except: —

"(1) For his own personal hotel and travelling expenses and for postage, telegraph and telephone expenses.

"(2) For payments which he may make to the state pursuant to law.

"(3) For contributions to his duly registered personal campaign committee.

"(4) For contributions to his party committee.

"(5) For the purposes enumerated in section 94–7 of the statutes, when such candidate has no personal campaign committee but not otherwise.

"2. After the primary, no candidate for election to the United States senate shall make any disbursement in behalf of his candidacy, except contributions to his party committees, for his own actually necessary personal travelling expenses, and for postage, telephone and telegraph expenses, and for payments which he may make to the state pursuant to law (*1911 c. 650*).

"*Disbursements authorized by committees.* Section 94–7. No party committee nor personal campaign committee shall make any disbursement except: —

"(1) For maintenance of headquarters and for hall rentals, incident to the holding of public meetings.

"(2) For necessary stationery, postage and clerical assistance to be employed for the candidate at his headquarters or at the

headquarters of the personal campaign committee, incident to the writing, addressing and mailing of letters and campaign literature.

" (3) For necessary expenses, incident to the furnishing and printing of badges, banners and other insignia, to the printing and posting of handbills, posters, lithographs, and other campaign literature, and the distribution thereof through the mails or otherwise.

" (4) For campaign advertising in newspapers, periodicals or magazines, as provided in this act.

" (5) For wages and actual necessary personal expenses of public speakers.

" (6) For travelling expenses of members of party committees or personal campaign committees (*1911 c. 650*)."

The following are the limitations of the expenses of candidates: —

" *Disbursements by candidates: amount limited.* Section 94–28. 1. No disbursement shall be made and no obligation, express or implied, to make such disbursement, shall be incurred by or on behalf of any candidate for any office under the constitution or laws of this state, or under the ordinance of any town or municipality of this state in his campaign for nomination or election, which shall be in the aggregate in excess of the amounts herein specified, namely: —

" (1) For United States senator, seven thousand five hundred dollars.

" (2) For representative in congress, two thousand five hundred dollars.

" (3) For governor, judge of the supreme court or state superintendent of schools, five thousand dollars.

" (4) For other state officers, two thousand dollars.

"(5) For state senator, four hundred dollars.

"(6) For member of assembly, one hundred fifty dollars.

"(7) For presidential elector at large, five hundred dollars, and for presidential elector for any congressional district, one hundred dollars.

"(8) For any county, city, village or town officer, for any judge or for any officer not hereinbefore mentioned, who, if nominated and elected, would receive a salary, a sum not exceeding one-third of the salary to which such person would, if elected, be entitled during the first year of his incumbency of such office. If such person, when nominated and elected, would not receive a salary, a sum not exceeding one-third of the compensation which his predecessor received during the first year of such predecessor's incumbency. If such officer, when nominated and elected, would not receive a salary and if such officer had no predecessor, and in all cases not specifically provided for, twenty-five dollars and no more."

The most daring and experimental feature of the whole law, which has found no place elsewhere, is the procedure for prosecutions of offenders. This is again based upon a concept already familiar to readers of this book. It strives to give the man who has no money a chance to stand in the court against a wealthy and corrupt man. In arriving at this procedure every kind of device was used to constitute some tribunal outside the courts to care for these cases. The attempts made by other states to establish a special tribunal for such cases have either been declared unconstitutional or would clearly be so under the Wisconsin constitution.

Comparatively few prosecutions have taken place under corrupt practice acts in this country and there are few practical laws which give equality in the long litigation of such cases. This procedure is an honest attempt to provide for prosecution quickly and effectively. There are those who doubt the wisdom of it and believe that this law has gone too far in this direction. It provides for investigation in a rudimentary way, suggestive of the investigations authorized by any of the regulative laws of this state. It specifies also that the state may supply special counsel so that the state and not the aggrieved individual says to the person who is in apparent error, "We are going to investigate this. If we find sufficient cause we are going to prosecute you however many times you may appeal and however far it may be necessary to go in order to punish you and purify our elections."

The procedure is appended at some length because of its original character and experimental nature. The leaders are seeking and inviting criticisms of it.

"*Prosecutions, proceedings by electors.* Section 94–30. 1. If any elector of the state shall have within his possession information that any provision of sections 94–1 to 94–38, inclusive, of the statutes, has been violated by any candidate for which such elector had the right to vote, or by any personal campaign committee of such candidate, or any member thereof, he may, by verified petition apply to the county judge of the county in which

such violation has occurred, to the attorney-general of the state, or to the governor of the state, for leave to bring a special proceeding to investigate and determine whether or not there has been such violation by such candidate or by such committee or member thereof, and for appointment of special counsel to conduct such proceeding in behalf of the state.

"*Leave to bring action.* 2. If it shall appear from such petition or otherwise that such candidate, committee or member thereof has violated any provision of this act, and that sufficient evidence is obtainable to show that there is probable cause to believe that such proceeding may be successfully maintained, then such judge or attorney-general or governor, as the case may be, shall grant leave to bring such proceeding and shall appoint special counsel to conduct such proceeding.

"*Special proceedings.* 3. If such leave be granted and such counsel appointed such elector may, by a special proceeding brought in the circuit court in the name of the state, upon the relation of such elector, investigate and determine whether or not such candidate, committee or member thereof, has violated any provision of this act, but nothing contained in this act shall be considered as in any way limiting the effect or preventing the operation of remedies now in existence in such cases.

"*Summons and complaint; service.* Section 94–31. 1. In such proceeding the complaint shall be served with the summons, and shall set forth the name of the person whose election is contested, and the grounds of the contest in detail, and shall not thereafter be amended except by leave of the court. The summons and complaint in the proceeding shall be filed within five days after service thereof.

"*Answer.* 2. The answer to the complaint shall be served and filed within ten days after the service of the summons and complaint. Any allegation of new matter in the answer shall be

deemed controverted by the adverse party without reply, and thereupon said proceeding shall be at issue and stand ready for trial upon five days' notice of trial.

"*Trial; precedence; without jury.* 3. All such proceedings shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the trial thereof, in or out of term, and the same shall be tried and determined the same as are civil actions, but the court shall without a jury determine all issues of fact as well as issues of law.

"*Consolidation of proceedings.* 4. If more than one proceeding is pending or the election of more than one person is investigated and contested, the court may, in its discretion, order the proceedings consolidated and heard together and may equitably apportion costs and disbursements.

"*Depositions.* 5. The parties to such proceedings may invoke the provisions of sections 4068 and 4096 of the statutes, but two days' notice of the taking of the deposition of any witness shall be sufficient notice thereof.

"*Change of venue.* 6. In all such proceedings either party shall have the right of change of venue, as provided by law in civil actions, but application for such change must be made within five days after service of summons and complaint, and the order for such change shall be made within three days after the making of such application and the papers transmitted forthwith, and any neglect of the moving party to procure such transmission within such time shall be a waiver of his right to such change of venue.

"*Judgment: costs.* 7. If judgment is in favor of the plaintiff the relator may recover his taxable costs and disbursements against the person whose right to the office is contested, but no judgment for costs shall be awarded against the relator, unless it shall appear that such proceeding has been instituted otherwise than in

good faith. All costs and disbursements in such cases shall be in the discretion of the court.

"*Judgment of ouster; disqualification; filling vacancy.* Section 94–32. 1. If the court shall find that the candidate whose right to any office is being investigated, or his personal campaign committee or any member thereof has violated any provision of this act, in the conduct of the campaign for nomination or election, and if such candidate is not one mentioned in subsection 2 hereof, judgment shall be entered declaring void the election of such candidate to the office for which he was a candidate, and ousting and excluding him from such office and declaring the office vacant. The vacancy thus created shall be filled in the manner provided by law, but no person found to have violated any provision of this act shall be eligible to fill any office or to become a candidate for any office, candidates for which have been voted for at the primary or election in connection with which such violation occurred.

"*Congressional and legislative offices; proceedings.* 2. If such proceeding has been brought to investigate the right of a candidate for member of the state senate or state assembly or for senator or representative in congress, and the court shall find that such candidate or any member of his personal campaign committee has violated any provision of this act, in the conduct of the campaign for nomination or election, the court shall draw its findings to such effect and shall forthwith, without final adjudication, certify his findings to the secretary of state, to be by him transmitted to the presiding officer of the legislative body, as a member of which such person is a candidate.

"*Appeals; stay of proceedings; injunction.* 3. Appeals may be taken from the determination of the court in such proceeding in the same manner as appeals may be taken as provided by law in civil actions, but the party appealing shall in no case be entitled

to or obtain a stay of proceedings. No injunction shall issue in any such proceeding suspending or staying any procedure therein or connected therewith, except upon application to the court or the presiding judge thereof, upon notice to all parties and after hearing.

"*No bar to criminal prosecution.* 4. No judgment entered as provided for herein shall be any bar to or affect in any way any criminal prosecution of any candidate or other person.

"*Special counsel; supreme court.* Section 94-33. 1. If the judgment of the trial court is appealed from in such proceeding, the county judge, the attorney-general or the governor, who made the appointment of special counsel for the trial court, shall authorize such counsel so appointed, or some other person to appear as special counsel in the supreme court in such matter.

"*Compensation.* 2. The special counsel provided for by this act shall receive a reasonable compensation for his services, not to exceed, however, twenty-five dollars per day for the time actually spent in conducting the proceedings in the trial court or upon appeal, and not to exceed ten dollars per day for the time necessarily expended in preparation therefor. Such compensation shall be audited by the secretary of state, and paid out of the state treasury upon a voucher and upon the certificate of the officer appointing such counsel to the effect that such appointment has been duly made, that the person so appointed has faithfully performed the duties imposed upon him, and that the number of days stated in such voucher have been consumed in conducting such litigation and in preparation therefor.

"*Witnesses; incriminating testimony; penalty; perjury.* Section 94-34. No person shall be excused from testifying in such proceeding, or in any proceeding for violation of or growing out of the provisions of this act, on the ground that his testimony may

expose him to prosecution for any crime, misdemeanor or forfeiture. But no person shall be prosecuted, or subjected to any penalty or forfeiture, except forfeiture of nomination or of election to office, for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in such proceeding or examination, except a prosecution for perjury committed in giving such testimony.

"*Expense accounts; failure to file: notification.* Section 94–35. The officer with whom the expense account of any candidate for public office is required by any law of this state to be filed, shall notify such candidate of his failure to comply with such law, immediately upon the expiration of the time fixed by any law of this state for the filing of the same, and shall notify the district attorney of the county where such candidate resides of the fact of his failure to file, and said district attorney shall thereupon prosecute such candidate.

"*Criminal actions; judgment.* Section 94–36. 1. If any person shall, in a criminal action, be judged to have been guilty of any violation of this act, while a candidate for any office under the constitution or laws of this state, or under any ordinance of any town or municipality therein other than the office of state senator or member of the assembly, the court shall, after entering the adjudication of guilty, enter a supplemental judgment declaring such person to have forfeited the office in the conduct of the campaign for the nomination or election to which he was guilty of such violation, and shall transmit to the filing officer of such candidate a transcript of such supplemental judgment, and thereupon such office shall be deemed vacant and shall be filled as provided by law.

"*Personal campaign committee; violation; judgment.* 2. If any person shall, in a similar action, be found guilty of any violation of this act, committed while he was a member of the personal

campaign committee of any candidate for any such office, the court before which such action is tried, shall immediately after entering such adjudication of guilty, enter a supplemental judgment declaring such candidate to have forfeited the office in the conduct of the campaign for nomination, or election, to which such member of his personal campaign committee was guilty of such violation, and shall transmit to the filing officer of such candidate a transcript of such supplemental judgment, and thereupon such office shall be deemed vacant and shall be filled as provided by law.

"*Congressional and legislative candidates; judgment.* 3. If any person shall, in a criminal action, be adjudicated guilty of any violation of this act, committed while he was a candidate for the office of state senator, member of the assembly, United States senator or representative in congress, or while he was a member of the personal campaign committee of any such candidate, the court, after entering such adjudication of guilty, shall forthwith transmit to the presiding officer of the legislative body as a member of which such officer was a candidate when such violation occurred, a certificate setting forth such adjudication of guilty.

"*Criminal court; jurisdiction.* 4. Any court having jurisdiction to enter judgment of guilty in any such criminal action is hereby vested with jurisdiction to enter such supplemental judgment, transmit a transcript thereof and issue a certificate as provided in this section.

"*Employment of counsel by candidate.* Section 94-37. Nothing contained in this act shall prevent any candidate from employing counsel to represent him in any action or proceeding, affecting his rights as a candidate, nor from paying all costs and disbursements necessarily incident thereto. No sum so paid or incurred shall be deemed a part of the campaign expenses of any such candidate.

"*Penalty.* Section 94–38. Any person violating any provision of sections 94–1 to 94–38, inclusive, of the statutes, shall upon conviction thereof, be punished by imprisonment in the county jail for a period of not less than one month nor more than one year, or by imprisonment in the state prison for a period of not less than one year nor more than three years, or by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by both such fine and imprisonment; and no person so convicted shall be permitted to take or hold the office to which he was elected, if any, or receive the emoluments thereof.

"*Appropriation.* Section 94–39. A sum sufficient to carry out the provisions of sections 94–1 to 94–39, inclusive, of the statutes, not to exceed the sum of fifteen thousand dollars is appropriated annually out of any money in the treasury not otherwise appropriated."

There is another feature of this act which is novel, as well as experimental. If candidates are limited as to the amount of money which may be spent for literature and notwithstanding this one man is using a newspaper through his financial interest, control or otherwise, equality before the law is practically violated. It was felt that something should be inserted to meet this condition and the following sections relate to this subject:

"*Newspapers and periodicals; paid advertisements.* Section 94–14. 1. No publisher of a newspaper or other periodical shall insert, either in the advertising column of such newspaper or periodical or elsewhere therein, any matter paid for or to be paid for which is intended or tends to influence, directly or indirectly, any voting at any election or primary, unless at the head of said matter is printed in pica capital letters the words 'Paid Advertise-

ment,' and unless there is also a statement at the head of said matter of the amount paid or to be paid therefor, the name and address of the candidate in whose behalf the matter is inserted, and of any other person, if any, authorizing the publication, and the name of the author thereof.

"*Persons financially interested in; statement.* 2. Every person occupying any office or position under the constitution or laws of this state, or under any ordinance of any town or municipality herein, or under the constitution or laws of the United States, the annual income of which shall exceed three hundred dollars, and every candidate, every member of any personal campaign or party committee, who shall either in his own name, or in the name of any other person, own any financial interest in any newspaper or periodical, circulating in part or in whole in Wisconsin, shall, before such newspaper or periodical shall print any matter otherwise than as is provided in subsection 1 hereof, which is intended or tends to influence, directly or indirectly, any voting at any election or primary in this state, file in the office of the county clerk of the county in which he resides a verified declaration, stating definitely the newspaper or periodical in which or over which he has such financial interest or control, and the exact nature and extent of such interest or control. The editor, manager, or other person controlling the publication of any such newspaper or article, who shall print or cause to be printed any such matter contrary to the provisions of this act, prior to the filing of such verified declaration from every person required by this subsection to file such declaration, shall be deemed guilty of a violation hereof.

"*Newspaper disbursements prohibited.* Section 94-15. No owner, publisher, editor, reporter, agent or employee of any newspaper or other periodical, shall, directly or indirectly, solicit, receive or accept any payment, promise or compensation, nor shall

any person pay or promise to pay, or in any manner compensate any such owner, publisher, editor, reporter, agent, or employee, directly or indirectly, for influencing or attempting to influence through any printed matter in such newspaper any voting at any election or primary through any means whatsoever, except through the matter inserted in such newspaper or periodical as 'paid advertisement,' and so designated as provided by law."

Initiative and Referendum

Statute law must fit economic conditions as Blackstone says "like the clothes on the body." It was feared by those who constructed the Wisconsin initiative and referendum resolution (jt. res. no. 74, laws of 1911) that if the Oregon plan was adopted, crude legislation, which would receive harsh criticism from the courts, would result. Bills, good in concept, but poor in technique, would result, it was thought, from the drafting of bills by groups in different parts of the state. Under the Oregon law these bills would have to be rejected or incorporated into the statutes without the change of a word or the dotting of an *i*. Bills submitted to the people should be so worded that a yes or no on the part of the voter is all that is necessary. It was felt that under any other system the voter might have to answer a question like that put to the man who insisted that a public speaker answers questions asked him by a yes or no. The speaker asked him in return, "When did you beat your wife last? Answer yes or no."

Time after time it has been found in the drafting of Wisconsin's strongest laws, that they were somewhat modified under the fire of criticisms made by attorneys and experts appearing before the legislative committees. With sufficient expert help for the legislature there is little to fear and much to gain from strong, clear argument presented by the opponents of a bill. The committee may say frankly that some kind of legislation embodying a certain idea is going to be reported and if the opponents wish it to be sane and workable they will give their best help by reasonable criticism. If they object to a certain actuarial computation made by the statistical experts, the committee, upon being convinced, will correct it. The Wisconsin railroad commission bill, for instance, was completely redrafted twenty different times.

The Wisconsin leaders, desiring to retain the advantages gained by subjection of bills to severe criticism, provided that any bill, which has been introduced into the legislature within the first thirty days of the session, whether it has passed the legislature or not, may be called out by petition and submitted to the people at the next election.

The section relating to this procedure follows:—

"A proposed law shall be recited in full in the petition, and shall consist of a bill which has been introduced in the legislature during the first thirty legislative days of the session, as so introduced; or,

at the option of the petitioners, there may be incorporated in said bill any amendment or amendments introduced in the legislature. Such bill and amendments shall be referred to by number in the petition. Upon petition filed not later than four months before the next general election, such proposed law shall be submitted to a vote of the people, and shall become a law if it is approved by a majority of the electors voting thereon, and shall take effect and be in force from and after thirty days after the election at which it is approved."

The same general procedure is applied to constitutional amendments, save that 10 per cent is required for an initiated constitutional amendment which has not passed the legislature and 5 per cent for a constitutional amendment which has passed one session of the legislature; whereas 8 per cent is required for either the initiative or the referendum on ordinary bills.

In order that institutions may not be destroyed by having their appropriations withheld until the results of the election have been ascertained, a state of affairs which caused much opposition to the Oregon amendment, the following procedure on emergency bills has been instituted: —

"An emergency law shall be any law declared by the legislature to be necessary for any immediate purpose by a two-thirds vote of the members of each house voting thereon, entered on their journals by the yeas and nays. No law making any appropriation for maintaining the state government or maintaining or aiding any public institution, not exceeding the next previous appropriation

for the same purpose, shall be subject to rejection or repeal under this section. The increase in any such appropriation shall only take effect as in case of other laws, and such increase, or any part thereof, specified in the petition may be referred to a vote of the people upon petition."

The criticism is made that the Wisconsin proposal is no initiative at all; that if the legislator does not wish to introduce the bill he will not do so. The first answer to this objection is that it would be an exceedingly poor bill whose author could not find, among a hundred and thirty-three legislators, one who would be willing to introduce it. Again, if a petition containing four or five thousand signatures or the number which is required under the Oregon petition demanding a bill is submitted, it is practically impossible to keep it out of the legislature. The petition may be used if necessary in getting some member to introduce the bill. No strength of the Oregon scheme is lost here. The orderly proceeding in the legislature is retained, and in addition there is an elasticity which is not found in the Oregon law. The petitioners who have secured a legislator willing to father the bill have at their command, through this legislator, the services of the legislative reference department, with its skilled draftsmen, who will aid them in the technical construction of the bill to be introduced.

Nearly all initiative and referendum plans provide that the legislature may send a competing bill to the

people, but the Wisconsin plan precludes the legislature sending anything to the people. The opinion is that the legislature should not be allowed to dodge its responsibility but should be made to state its preference by aye or no. It should not be permitted to confuse the situation by sending one or more competing bills to the people. This clears the decks and makes the issue clean cut. Suppose that a strong bill comes before the legislature and that body passes some weak substitute for it; under this plan the people can do one of two things: they can call for a referendum on this weak plan and kill it or they can call out some other and better bill, with whatever strengthening amendments the petitioners may desire, and pass this bill, thus repealing the first bill by superseding it. In any case the legislature cannot dodge the situation; it must meet its obligations — and the roll call before the public.

After all, it is not unlike the process by which the legislature delegates to committees the power to consider bills and to recommend them. The legislature should be a convenience, a committee of the whole people. If it does not fulfill the will of the whole people for some particular reason, the people should have a right to assert their will. If a committee of the legislature does not do what the legislature desires, it overturns the reports of the committee on the floor of the house, modifies it or does whatever it pleases with it,

so under this resolution, the people will allow the legislature to act upon the measures as a matter of convenience. If the legislature passes something which the people do not want, they will overturn that measure if they so desire, or if the legislature fails to pass something which the people do want, they can remove it from the hands of the legislature and refuse to accept the report of the legislature upon the matter. We have in this joint resolution a new principle applied to the initiative and referendum. It does not contain the "direct drive" or "direct legislation" proposition of the Oregon law, but it does contain that which is fully as strong and which has some essential features making the whole proposition more harmonious. It is a strong aid to representative government and at the same time a vigorous method of directly expressing the popular will. An organization which puts a bill before the legislature can take it out just as it was put in, but it must give a public hearing for so many months to all parties interested. Naturally if a part of the legislature is defeated on some big proposition that portion will say to the rest, "We will go out to the people and ask the people's support upon this matter and they will decide between us."

The initiative and referendum plan herein described has yet to pass the 1913 legislature and be accepted by the people before it becomes a part of the Wisconsin

constitution. There has been such a demand for copies of this resolution that it is presented in full in the Appendix.

The recall resolution is very simple and does not include the judges. The legislature and the people in general are so well satisfied with the Wisconsin supreme court that the legislature almost unanimously opposed the insertion of the recall of judges into its resolution. The recall will receive further consideration in a later chapter dealing with the judiciary.

The proposed recall amendment is as follows:—

"Section 12. The legislature shall provide for the removal by recall from office, by the qualified electors of the electoral district in which any officer is elected, of every public officer in the state of Wisconsin holding an elective office, except judicial officers."

The laws described in this chapter are the principal ones relating to reform in direct legislation and electoral machinery. Space forbids the description of important laws relating to registration in cities and the betterment of electoral conditions in general. Wisconsin does not require the senatorial pledge nor any form of statement from legislators intended to insure the direct election of United States senators such as has been used in Oregon. It was defeated at the 1911 session of the legislature by a narrow margin because of what was apparently an unexpected return to party lines. It undoubtedly will

be considered later as there seems to be a strong sentiment in favor of it.

Wisconsin has not the real Australian ballot, that is, the ballot without the circle which has been used for a long time in Massachusetts and Minnesota and now is being very gradually adopted in other states. It was often recommended by Governor La Follette and at one time was defeated by a 40 to 40 vote. The Social-Democratic party, which is represented by fourteen members in the legislature, are greatly opposed to this form of ballot. This organization believes in working strictly through party lines, in making a program and remaining true to it regardless of individuals. To remove the circle from the ballot would be striking at the very fundamentals of this party. The tide has always been turned against an Australian ballot bill by the Socialist vote and proposed bills for non-partisan elections in cities have suffered like defeat. A fierce struggle for the enactment of this last named measure is already presaged for the 1913 legislature.

The electoral machinery is not perfect, but the above is a brief statement of its underlying principles and of what has been accomplished thus far for its improvement.

CHAPTER V

Educational Legislation

Says that great student of Western history, Professor Frederick J. Turner, formerly of Wisconsin, now of Harvard University:—

"Nothing in our educational history is more striking than the steady pressure of democracy upon its universities to adapt them to the requirements of all the people. From the State Universities of the Middle West, shaped under pioneer ideals, have come the fuller recognition of scientific studies, and especially those of applied science devoted to the conquest of nature; the breaking down of the traditional required curriculum; the union of vocational and college work in the same institution; the development of agricultural and engineering colleges and business courses; the training of lawyers, administrators, public men, and journalists — all under the ideal of service to democracy rather than of individual advancement alone. Other universities do the same things; but the head springs and the main current of this great stream of tendency come from the land of the pioneers, the democratic states of the Middle West. And the people themselves, through their boards of trustees and the legislature, are in the last resort the court of appeal as to the directions and conditions of growth . . . have the fountain of income from which these universities derive their existence. . . .

"In the transitional conditions of American democracy . . . the mission of the University is most important. The times call for educated leaders. General experience and rule-of-thumb in-

formation are inadequate for the solution of the problems of a democracy which no longer owns the safety fund of an unlimited quantity of untouched resources. Scientific farming must increase the yield of the soil, scientific forestry must economize the woodlands, scientific experiment and construction by chemist, physicist, biologist and engineer must be applied to all of nature's forces in our complex modern society. The test tube and the microscope are needed rather than axe and rifle in this new ideal of conquest. The very discoveries of science in such fields as public health and manufacturing processes have made it necessary to depend upon the expert, and if the ranks of experts are to be recruited broadly from the democratic masses as well as from those of larger means, the State Universities must furnish at least as liberal opportunities for research and training as the universities based on private endowments furnish. It needs no argument to show that it is not to the advantage of democracy to give over the training of the expert exclusively to privately endowed institutions."

The people of Wisconsin have demanded this efficiency and the University of Wisconsin has been noted not only for the philosophy of service to the state which has been maintained but for the practical courses which deal with every factor in the life of the state. That Wisconsin has changed from a wheat-growing state to a great dairy state has been due largely to the fact that the agricultural "short course" in the University of Wisconsin, which has been so popular in the past, has turned out real farmers and real dairymen. In 1905, the University of Wisconsin was placed upon a permanent mill tax basis. Its appropriations are now con-

tinuing, so that it can lay plans for the future with a certain hope of maintenance. This does not mean that the legislature cannot modify the plans of the university at any time, but it does mean established continuity. The wisdom of this is shown by the fact that some of the universities and educational institutions of the country have been in a turmoil of strife because under the so-called budget system their appropriations end every two years. They are helpless under the attacks of politicians and have no way to plan ahead. Freedom of speech in the university might have been seriously impaired recently had a minority of the legislature had the power to withhold appropriations for the university. It is evident that, if the legislature every two years passes upon the entire appropriation for an existing institution, a small minority of one house is able to threaten or block an institution so that it cannot extend to its fullest usefulness.

The college of agriculture in Wisconsin has been maintained as a part of the university, and although the state in its early days wasted its public lands reserved for educational institutions in a reckless manner, the state has been generous and cheerfully borne the burden of paying for a university. During the session of 1911 the normal schools also were placed upon a mill tax basis, so that they too have a continuing appropriation. Throughout the state county schools of agriculture have

grown up rapidly. Agriculture has been placed in the high schools, manual training has been provided, state inspection and regulation have been secured and a high order of educational enterprise has resulted. A complete industrial program, calling for a separate body to control industrial education and making the most complete plan for an educational system which has ever been considered or introduced in any state of this country, was organized by the legislature in its 1911 session.

The university extension division is the great, powerful link which connects every part of the university with the individual in the state. It must be remembered that this has a potent influence upon the public and the state and that the influence of the university reaches out into the homes of the state through this extension department by means of its correspondence courses, debates, etc., more completely than in any other state. Thus the state through its generous appropriations to this institution has created a powerful instrument of knowledge, not only on public questions but scientific ones as well.

Agriculture

The prosperous agricultural condition in this state to-day stands as the monument to a great genius, William A. Henry, formerly Dean of the School of agriculture, University of Wisconsin.

Agricultural instruction has been given at the university since 1876, but in 1885 the "short course" and the courses which are especially formed for those who did not have the time or educational qualifications to take the long courses, were instituted. These courses have been of enormous help to the entire state; they have been the chief source of the upbuilding of the great dairy industry of the state, now probably second to none in the country.

In 1890 the course especially adapted for creamery and cheese factory operators was started. Hundreds of young men actually engaged in agricultural pursuits attended these courses every year. In 1908 in addition to farmers' institutes, agricultural field work was started; demonstrations of all kinds were held throughout the state. Through this whole agricultural extension movement, probably a closer relation between the farmers and the agricultural department has been instituted in Wisconsin than in any other state and this is just the beginning. The county agricultural schools have aided this work greatly in recent years and are being rapidly established. The following quotation from a recent report shows how rapidly and how efficiently this work is progressing: —

"Besides supplying the real needs of agricultural instruction in their counties, these schools serve a class of people the county and high schools fail to reach; they carry on their own lines of

field work among farmers; they organize cow-testing and grain-growing associations; they furnish assistance in planning and creating farm buildings; they hold farmers' meetings; they are the logical centres from which the agricultural field work service, carried on by the State College of Agriculture, radiates."

The following is a list of some of the work and other activities of the agricultural school of the university:—

It has bred pedigree strains of barley, oats and wheat, which have increased the grain crop of the state millions of dollars. These varieties won the world's championship, 1910–1911, at the national corn show.

It has produced a kind of corn which can be grown in the northern part of the state.

It has produced grasses and legumes which formerly could not be bred in the state.

It has made extensive investigations in the sugar beets in relation to the development of that industry in the state.

It has found remedies for noxious weeds.

It has maintained trial orchards in the northern part of the state, so that where formerly very little fruit existed, now all kinds of fruit are growing.

It has discovered new methods of managing marsh soils.

It has worked out new methods of cranberry culture, increasing the product of cranberries from one to ten barrels per acre to seventy to eighty barrels per acre.

It has worked out scientific rations for cattle. Five of the six tests now everywhere used in dairying were discovered by this department.

The Babcock fat test is used all over the world. The moisture test for butter, the Wisconsin curd test, the Farrington acid test and the Hart casein test are the other great improvements which have been worked out.

New methods of making cheese, utilizing butter, have been worked out.

The round wood silo was first used by this station.

A new system of ventilation for stables now universally used was worked out here. Even new methods of blasting and pulling stumps have been discovered.

The agricultural department has demonstrations all over the state; grain growing contests, pedigree high grade seed contests are started and directed.

The fight against tuberculosis in cattle by demonstration has been kept up vigorously.

Fertilizers and feeding stuffs have been inspected and analyzed.

A system of stallion registration has already reduced the percentage of grade stallions over 15 per cent in the state.

Tests of soils have been made on hundreds of farms.

Plans have been made to reclaim 116,000 acres by drainage surveyage within the next five years.

How astonished a college professor of forty years ago would be if he were told that a college would do all

these things! Truly we do not have to look in the dictionary now for a definition of what is a university.

The question arises at once, "But isn't all this materialistic? Does the University of Wisconsin spell 'cow'?" And what of it? If the boy comes from the farm, and learns at the university how to make that farm more useful and from the scientific methods which he acquires develops more orderly habits of life, if he receives some inspiration which leads to progress or some ideals which lead to good citizenship, is it not worth while? If he because of his scientific knowledge of farming gained in a short course makes money, his sister may be sent to school, probably a luxury which could not have been afforded otherwise.

In addition to the above an agricultural program has been planned which includes the teaching of agriculture in all the rural schools, in the state graded schools, the township high schools, and the county training schools for teachers, and a greater appropriation for university extension and agricultural demonstration, etc. The foundation of all these things has been put into law.

University Extension

University extension has long been connected with colleges, but such have been the aristocratic influences of education (and there are no greater aristocrats found

anywhere than in education) that it has died down in other states until it has become simply a name.

The increasing spirit in Wisconsin demanded that the university should serve the state and all of its people and that it should be an institution for all the people within the state and not merely for the few who could send their sons and daughters to Madison; thus was brought about the establishment of the extension division about five years ago.

The University of Wisconsin during these few years has shown the world what constitutes real university extension. It has accomplished what many schools have tried to accomplish for many years with but indifferent results. It made what had been an ideal a practical reality. It actually did and does bring the university to every fireside. It actually has shown all universities a means for shedding the light of knowledge from within its walls to every home.

The distinctive feature of this department is that it has a faculty, an administration and an appropriation of its own. It now spends $125,000 a year. Under the old system of university extension, a professor gave part time at the university and delivered a few sporadic lectures in the field. Under this new extension arrangement, professors of the highest rank are sent out into the villages, shops and factories as practically travelling teachers, meanwhile bringing the students in the field

in touch with the university by means of correspondence studies. There are several centers or stations from which the work can expand into the surrounding localities established throughout the state for this work. General divisions with regular faculty are formed at the university, notably in engineering, mathematics, drawing, business administration, and to some degree in languages. This is nothing new; private enterprise has been doing this for some time but it is obvious that the state can do more than any private enterprise. Private correspondence schools must make a profit while the state may be satisfied with a profit of improved conditions. The state can well afford to invest vast sums of money, while private enterprise must always take out its dividends. When the state enters into this field the private enterprise cannot long remain a competitor.

Some idea of how extensive and diverse the work of the University Extension division is can be obtained from the following statistics:—

There are now about 5000 active students taking the correspondence work; ninety-eight professors and instructors are supervising this work. Besides this there are fifty-seven local classes in organized districts which the professors visit.

In the department of debating and public discussion about 80,000 articles are lent out annually throughout the state.

In the department of general information and welfare many institutes are held and much diverse work is done. Under its auspices were conducted the Milwaukee bakers' institutes, the institute of municipal and social service of the same city which ran twenty-one weeks last year and 140 conferences and lectures. The Wisconsin conference of criminal law works in connection with this department, as does also the Wisconsin conference of charities and corrections. An anti-tuberculosis exhibit, in coöperation with the Anti-tuberculosis association, was carried on by this department, which reached some 112,000 people in this state. In all, nearly 500 lectures were given under this department. This same department maintains the municipal reference bureau which answers 1500 questions a year from many villages and cities throughout the state and which does much to organize the civic interest of these places.

The bureau of civic and social centre development is also under this division. A national conference was held at Madison, under the auspices of this bureau, and some sixty-four communities or districts were assisted in bettering social centre facilities. A lecture bureau sent out lecturers last year to some ninety communities in the state, with a total of 153 lectures.

There are three organized districts of the extension department in the state, one in Milwaukee, one at Oshkosh and one at La Crosse. The one in Milwaukee

has one district representative, four local and travelling instructors, eight local instructors for night classes and four field organizers and thirty-six classes, — a good-sized university in itself. These centres are being rapidly developed throughout the state.

The great public questions of the day are all outlined in these debates. Following are some of the outlines of debates: —

General Statement — Discussions — Themes — Package Libraries.
Principles of Effective Debating.
Debating Societies, organization and procedure.
How to Judge a Debate.
Constitution for Triangular Debating Leagues.
Civic Clubs, organization and programs.
Farmers' Clubs, organization and programs.
Annexation of Cuba, Independence of the Philippines, with references.
Closed vs. Open Shop, with references.
Commission Plan of City Government, with references.
Consolidation of Rural Schools, Free Text Books, with references.
Federal Charter for Interstate Business, with references.
Guaranty of Bank Deposits, with references.
Income Tax, with references.
Increase of Navy, Ship Subsidies, with references.
Inheritance Tax, with references.
Initiative and Referendum, with references.
Parcels Post, with references.
Popular Election of United States Senators, with references.
Postal Savings Banks, with references.
Proportional Representation, with references.

Recall, with references.
Restriction of Immigration, with references.
Simplified Spelling, with references.
Tariff on Trust-Made Steel Articles, with references.
Woman Suffrage, with references.

Criticism of the University

The university has its endowment from the people and is not seeking endowments from private funds; therefore free speech and service to the state are not

denied. It is true that it has been frequently accused of "ruling the state." But as a general rule the professors wait until asked before venturing to give an opinion upon a public question; indeed, they are generally afraid of criticism, and it sometimes requires a great deal of urging upon the part of the legislature to obtain their help. During many years of legislative work the writer has found the members of the legislature glad indeed to confer with the expert professor and ask his advice, be it on a question of tuberculosis, the chemistry of gas or the regulation of monopoly. Such professors are often reviled and censured as endangering the life of the university — accused of throwing it into politics — but never in all that time has the author heard a single comment involving the names of professors who were engaged as well-paid experts by private corporations. No comments were made when a man connected with the university law school, for instance, was registered as the "counsel before the legislature for all public service corporations," and yet at the same time other men whose advice was sought by legislators were attacked fiercely because of unpaid toil. Many attorneys and scientists of both types have been before the legislature but there has been no criticism of the former class; indeed they deserved none, as they were all men of high standing and rendered good service before the legislature, for which they were well paid by private parties.

If the legislature may not secure expert service save that paid for by private interests, it will never reach the scientific basis of these great questions now before us which must be solved by the aid of the expert's technical knowledge. The university should not be blamed for having men upon whom the legislature may call for advice. They are paid from public funds; why should the public not avail itself of their services?[1] Certainly the teacher of political science or political economy who is worthy of consultation upon governmental matters can give the students a better idea of those great subjects than some mossback whose theoretical learning was acquired by carefully keeping away from the only laboratory which could be of any service to him. We would not have the diseases of cattle taught by a man who has never dissected a steer or observed the course of disease at first hand. Why then have a professor of political economy, political science, teach classes in governmental matters when he has never worked at the practical solution of any of the great economic or political questions of the day?

Indeed, it is a healthy sign — a sign that a department of economics or of political science is not sleeping when its men are constantly attacked by those who, session after session, have crowded the legislative halls in opposition to every constructive piece of legislation.

[1] See Appendix for list of men serving both state and university.

If the legislation has been safe and sane or has been administered fairly, some of these very men should pause and think and render thanks to the careful professor who has been called in to aid its making or who has assisted in its administration.

The university has a duty to perform and cannot shirk it. It is being supported out of public funds, and what better way can it pay its obligation than through the production of good citizens and expert help. Says Professor Turner:—

"But quite as much in the field of legislation and of public life in general as in the industrial world is the expert needed. The industrial conditions which shape society are too complex, problems of labor, finance, social reform too difficult to be dealt with intelligently and wisely without the leadership of highly educated men familiar with the legislation and literature on social questions in other states and nations.

"By training in science, in law, politics, economics and history the university may supply from the ranks of democracy administrators, legislators, judges and experts for commissions who shall disinterestedly and intelligently mediate between contending interests. When the word 'capitalistic classes' and 'the proletariat' can be used and understood in America, it is surely time to develop such men, with the ideal of service to the state, who may help to break the force of these collisions, to find common grounds between the contestants and to possess the respect and confidence of all parties which are genuinely loyal to the best American ideals. The signs of such development are already plain in the expert commissions of some states; in the increasing proportion of university

men in legislatures; in the university men's influence in federal departments and commissions. It is hardly too much to say that the best hope of intelligent and principled progress in economic and social legislation and administration lies in the increasing influence of American universities. By sending out these open-minded experts, by furnishing well-fitted legislators, public leaders and teachers, by graduating successive armies of enlightened citizens accustomed to deal dispassionately with the problems of modern life, able to think for themselves, governed not by ignorance, by prejudice or by impulse, but by knowledge and reason and high-mindedness, the state universities will safeguard democracy. Without such leaders and followers democratic reactions may create revolutions, but they will not be able to produce industrial and social progress. America's problem is not violently to introduce democratic ideals, but to preserve and intrench them by courageous adaption to new conditions. Educated leadership sets bulwarks against both the passionate impulses of the mob, the sinister designs of those who would subordinate public welfare to private greed. Lord Bacon's splendid utterance still rings true: 'The learning of the few is despotism; the learning of the many is liberty. And intelligent and principled liberty is fame, wisdom and power.'

"There is a danger to the universities in this very opportunity. At first pioneer democracy had scant respect for the expert. He believed that 'a fool can put on his coat better than a wise man can do it for him.' There is much truth in the belief; and the educated leader, even he who has been trained under present university conditions, in direct contact with the world about him, will still have to contend with this inherited suspicion of the expert. But if he be well trained and worthy of his training, if he be endowed with creative imagination and personality, he will make good his leadership."

The state supported university as now existing in the middle west is to be the most efficient school of higher education the world has ever seen. It cannot help being so. As its cost increases, those who pay the taxes will demand that results be shown and the struggle between old ideals, higher learning and the practical demands of the busy world will cause such a reaction upon reaction that it cannot help producing the real mixture of the ideal and the practical which is so much needed to-day. The by-products of the establishment of a department like the Wisconsin university extension division are perhaps of greater value than the department itself. The professor comes in contact with the needs of the citizen and tempers his theory to practice and the citizen learns to respect the professor — and demands more like him.

Industrial Education

Industrial education has been placed under the supervision of an industrial education board to be composed of three employers of labor and three skilled employees, the state superintendent of public instruction, the dean of the extension division of the university and the dean of the college of engineering at the university. Hereafter every child employed between the ages of fourteen and sixteen will have to attend school for five hours a week out of the time of the employer (chapter 660, laws

of 1911, chapter 505, laws of 1911). Instead of concentrating upon a few costly trade schools, the plan is to build up a great system of industrial education for those actually in work; to do something, where nothing has been done to help *all* the workers; that is, the German continuation school in all its essentials has been incorporated into the school system of Wisconsin. The whole system is maintained by a special tax and has a special administrative board, as above described, in order that the boy and girl who is actually working may have as good a chance as the boy or girl who does not have to work, but can attend high school or college. Classes are being established as rapidly as possible, so that the special work in which children happen to be will be provided for. It is specifically provided that hygiene and sanitation must be taught in some way (chapter 615, laws of 1911). It is specifically ordered also, that all illiterates under twenty-one years of age must attend evening schools whenever these evening schools can be reached by them, unless excused because of lack of strength (chapter 522, laws of 1911). An attempt has been made to rehabilitate the old system of apprenticeship by chapter 347, laws of 1911, but it will be noted that the outline of the indenture contains the following which shows the social purpose of this kind of legislation:

"An agreement between the employer and the apprentice that not less than five hours a week of the aforesaid fifty-five hours per

week shall be devoted to instruction. Such instruction shall include: two hours a week instruction in English, in citizenship, business practice, physiology, hygiene, and the use of safety devices."

The boy who is to become a bricklayer, while he is in apprenticeship will be taught not only the mere trade but also some essentials which will prepare him for life and a place in the civic body, giving him the opportunity to broaden his outlook that later he may be able to pass from the ranks of manual skill to the ranks of administrative ability. He will be taught not only bricklaying but architecture, buying and correlated subjects. And so in every industry the same general requirements, subject to approval by the state board of industrial education, must be met.

A local board of industrial education is also provided and a liberal state aid arrangement is added, the whole machinery constituting the most complete plan of industrial education, compulsory in most of its features, which has ever been attempted by any American state.

That the commission upon the plans for the extension of industrial and agricultural training, appointed by the legislature of 1909 to report in 1911, had a very broad outlook, that it was looking for the improvement of manhood, of womanhood, and of the state, is shown by the following quotation from its report. It is given here because it is full of the spirit of this state and of the movement herein described.

"It was the German philosopher Humboldt who said: 'Whatever you put into the State you must first put into the schools.' If the industrial education advocated by your committee will lead merely to a better economic man, it will not reach its highest aim. It must be judged by its by-products as well as by its result in dollars and cents. It must be judged by its effect upon the life of the people and upon human happiness and a varying number of our great problems, social and economic and moral, with which we have to deal to-day. To be in its truest sense efficient, it must be a truly democratic education, an education which will fit all the needs of all the people. This does not mean, then, that it must be merely utilitarian, but the effect of it must be such that we can answer definitely the question; will it improve the moral situation? Will the boy who is industrially educated under this system be a better man or a better husband? Will he be a better citizen? Will he have a higher sense of moral obligation? Will be be more truthful, honest? Will he have a better physique? Will he be a better factor in our life to-day?

"It is obvious that in order to make this system so that all these questions can be answered in the affirmative, additions must be made to the industrial program. The Germans have not forgotten to do this. They are noted as a law-abiding and patriotic people. There is no doubt that the system by which citizenship is taught in the German continuation schools has its effect upon this spirit in that country.

"In this connection, Dr. George Kerschensteiner of Munich has the following to say: '. . . As you see, professional efficiency is put foremost because those who cannot stand upon their own feet vocationally are unable to help others and prevent them from falling. But in closest contact and intimately related with vocational education must go the second aim of our program;

develop insight into the connection and relation of the interests of all citizens alike, and especially of our country, to take care that that interest manifests itself in the exercise of patriotic self-sacrifice, justice, self-control, coöperative spirit and rational hygiene, sensible frugal habits of living. If we keep the first aim only uppermost in our educational endeavors, then there is danger of training up an excessive professional and individual egotism.

" ' And just here we touch the critical point in our consideration of the value of industrial schools and education. If we instruct the prospective industrial mechanical worker not only in the mechanical-technical part of his trade but likewise introduce him into the mysteries of social and economic conditions, not only of industrial life but with equal interest into the social and economic life of the community and nation of which he is a citizen; if we train him from early youth to make him feel that he is a part, however small a part, of the larger whole of the nation to which he is inseparably tied by all his interests, then he will be more or less able to counteract and modify, if not to annul, the evil tendencies of modern industrial conditions.

" ' We should not forget that economic and social conditions are not only the product of natural laws but to no small degree they are the product of the moral and educational standards of the people. . . .'

" There is no doubt that courses in hygiene, sanitation, protective devices in machinery as well as the courses in citizenship, are indispensable in these schools. They are seldom or never omitted in the best continuation schools abroad. In practically every continuation class in Munich a boy has to take one hour a week of this training for four years. The cumulative effect of this upon citizenship is very great, as well as upon the health and stamina of the race, and cannot be underestimated.

"The combating of political corruption, as well as physical disease, is one of the great by-products of this work, the effect of which has not been fully understood in connection with other correlated movements in Germany. Sanitary conditions of factories, sanitary conditions of homes, progress towards health and the fighting of disease, the economies practiced by the cutting down of injuries and of sickness caused by carelessness in factories, the cheapening of industrial insurance—all come from this source. These are powerful influences which are basic and cannot be omitted. It is but a truism to say that intelligence is aided when disease is curbed and good, cleanly conditions exist in the home.

"Reformers in America are striving to get some knowledge of why corruption is rampant here. We are fighting political corruption and physical disease at the same time. We may have reform periods or spasms; we may create temporary organizations for the purpose of reforming government; we may deliver lectures, or our magazines may lead in pointing out the defects in government, but we will never get a true sense of obligation to the state until we teach that obligation. If we teach this in college or the high school we will not hit the mark. How can we, when four-fifths of the boys and girls do not go to high school or college? We never can completely fight disease, political or physical, unless we teach these four-fifths, in some way, how to fight.

"Our great success in the battle against tuberculosis comes largely from a determined effort to educate our people in a knowledge of that disease, its prevention and cure. We can never eradicate political corruption unless we use the same determination and begin at the time when a young man can be taught something about citizenship. Our lawyers tell us that very little can be done by legislation; that we cannot make people good by law. The Germans look upon the law and the state as great moral forces,

but it is doubtful if the lesson of moral obligation would be any more effective in Germany than it is in this country, unless this same foundation in education exists.

" Consider tuberculosis for a moment. We had in America a few years ago awful conditions in the slums of our cities. We had what were known as the ' lung blocks.' It was the custom to allow the poor people who had tuberculosis to die in these horrible unsanitary tenements without doing anything to eradicate the scourge. If a man was seized with tuberculosis, people said: ' Well, what can we do? He will die. We can do nothing.' Scientists had for a long time known that if patients could be segregated and fresh air and cleanliness could be provided, we would stand a good chance of winning the battle against tuberculosis. That terrible disease had its main seats in the horribly overcrowded sections in our cities, inhabited mainly by immigrants or the sons and daughters of immigrants. What was done about it in the end? With desperate odds against us, we began a great campaign of education. We put enormous sums of money into the fight to teach people how to overcome this great plague. Now we are winning the battle and we are driving this disease out of our cities and our country — *by education.*

" We have eliminated other diseases as the result of this great movement, and as a by-product of our methods. By teaching cleanliness, fresh air, sanitation, we have helped to drive away typhoid fever and pneumonia, and to raise the physical and mental standards of our people. Our political disease goes hand in hand with our physical disease. It comes from the same source. It comes largely from the overcrowded, unsanitary districts in our cities. It comes largely from alien population pouring into the country at the rate of over a million a year. However good the stock from which they came, the great majority of our immi-

grants know very little about the history of our country; in fact, hardly know what American citizenship is. They come in contact with the worst types of citizenship we have among us; they see the deference to wealth acquired by corruption, and the general carelessness of our ideals concerning government. They naturally form their ideals under these conditions. Is it any wonder that when nothing is done to cure political corruption, it should be as rife in these places as tuberculosis?

"When an immigrant comes to this shore, he has to wait five years before he is naturalized. In those five years what education in citizenship does he obtain? He sees the poor in the slums around him, he realizes the desperate fight for existence, he often finds that his only help in that strife is the political boss or the corrupt politician. He cannot help getting a perverted idea of citizenship. How can we fight this political tuberculosis and have any success? Does it seem possible that any industrial prosperity which comes from industrial education will be of any real use to us in the future, if conditions similar to these exist? If we strive to build up prosperity through industrial education without building up the health of the average man or average woman, and without building up true citizenship, we will not have really democratic education. Any industrial education without these other factors will be a dismal failure. We may pass all the resolutions we want to, but the only way to cure political corruption in our cities is to cure it in the way we are stamping out tuberculosis — *by education.*"

The way in which the university will coöperate with industrial education may be of interest to students of industrial education who are now striving to meet the great problem of how to start a system of this sort. The following excerpt from the report which has now been enacted into law shows how it may be done: —

"The university extension division cannot, from its very nature, do the permanent work of the continuation and trade schools. There is a parallel between its methods and work and those of the early church organizations. It was necessary at first to have some kind of missionary work, as perhaps some little local demand became evident. Then circuit riders were sent around; men who preached one Sunday in one little town and the next Sunday in another; the circuits grew smaller as time went on until churches were built, pastors secured, and permanent organizations established in each town.

"The university extension work can follow the same method. When little centers are established, permanent buildings erected and permanent teachers secured, then the university extension work can be used as a sort of circuit riding organization for the still higher grades of work until the needs of the higher grades are supplied by permanent organization. In this way the university extension work can form the means of building up the whole system from one which deals even with the needs of a single individual in a little community to a complete system for the whole state. This very elasticity, resulting in a variety of results by which different grades of students and different grades of work can be taken care of, is just what made German industrial education successful. With a mistaken policy, some of her educational directors, fortunately, however, not the leaders, have recently tried to grade and qualify this work. This has been defeated and the work saved from becoming static. The present system in that country, with local schools adjusted to local needs, with varying degrees of schools from the lowest continuation school through to the highest technical school, has been a far better arrangement for Germany, and for that matter can be a far better method to start with in this state, than that brought about by a more strict classification. . . .

"It is just this element of elasticity which Privy Councillor Dr. von Steefeld advocates, that makes the extension division of peculiar significance. It is fortunate for us at this time that we have this organization in our state. In a state like ours, containing many small villages with one or two manufacturing establishments, the question upon which our whole scheme must fall or must live, is what can we do with industrial education in each little place? The large manufacturer does not have to be discussed. He can teach; he can gather in his apprentices and train them, but most of the factories or mercantile establishments in Wisconsin are not large enough to manage an undertaking of this kind for themselves. Most of our schools in the northern part of the state, especially in the scattered villages, have not enough money to give any kind of an advanced course. If we cannot give these courses by one means we must give them by another, and the only way in which we can give them and reach out to all, is through the extension division, its correspondence methods and its travelling lecturers and teachers. Professor Person in his book upon industrial education says: 'Except in those rare instances of highly centralized states which are able to impose upon their people educational systems created de novo, such an institution must be the result of gradual development. When its scope is enlarged to meet new situations, to reach new classes or to train for new activities, this enlargement should be accomplished neither by creating new instruments unrelated to the general system nor by wholly reconstructing the already existing system. This should be accomplished by developing new members which fit into the existing system and which become integral parts of it.'

"Wisconsin is not a highly centralized state and cannot impose upon its people an educational system created de novo. The university extension division will not interfere in any way with the

existing system, but will add a new member which will dovetail into the gaps in the whole. It will not only fit into the gaps of the whole system, but it will be the medium by which the results of the highest economic research and the results of the best economic and industrial methods can be added from time to time. It will be a long time in this state before every city of the third or fourth class can have any very efficient higher industrial education. The elementary grades will necessarily be taken care of first and the simple needs administered to. If the spirit in which this report is written be carried out, the greatest number will be served in a little way until something can be done for those who demand more special work. But it is by means of the extension division that these special cases can be taken care of. If a young man outstrips his competitors and by extraordinary brightness devours the educational opportunities of his prescribed district, there will be only one way in most of the cities and villages to take care of him, and that is by allowing him to expand through the extension division."

Thus the efficiency of the unit is looked after in order that what is done may be well done and will be no sporadic, so-called reform movement. That it will be built on the sound rock of good citizenship and will be safe from fads and fancies not even the most conservative business man can deny.

The state has a system of normal schools with a separate board of regents, provides liberally for its grade and high schools and is gradually developing plans for betterment. Considering the now unsettled condition of large areas of this state, good work has been done in the county training schools for teachers, the teachers'

institutes and in the establishment of a good system of regulation and inspection. An investigation is now in progress under the direction of the newly created Board of public affairs with the help of experts from the Bureau of municipal research in New York City, which will result, no doubt, in a thorough readjustment of the system. The means for the enforcement of the truancy laws were greatly strengthened by the 1911 legislature, while severe compulsory education and child labor laws are gradually having good effect. Over fifty laws relating to the betterment of the Wisconsin schools were passed at the session of 1911.

Lack of space forbids going into many interesting educational developments but a word must be said about the travelling libraries of the Wisconsin free library commission. These boxes of books are sent into every far-away section of the state bringing directly to every home in every little community the best literature of the day. They are changed often so that there is always something fresh and new. They have brightened the lives of many toilers and made interesting and instructive the long winter evenings in the little homes on the far-away farms as well as added to the volume of intelligence, citizenship and womanhood. The travelling libraries and the public libraries which have followed after them together with the library school, will remain a truly great monument to a great seer and warm-hearted idealist, Mr. Frank A. Hutchins.

Conservation and Development

Although Wisconsin was the third state to take up the work of preserving the forests in a successful manner, it was the first great lumber state to do so. With the lumber baron eager in his desire to waste and destroy, there were many difficulties in the establishment of an efficient department and there is nothing of which the state may be more proud, than of its accomplishment. It has now a reserve of 423,000 acres, and plans are made for a reserve of 2,000,000 acres. It is the purpose to preserve the upper waters of the great rivers of the state in order that the water power may be conserved, at the same time helping the wood industry of the state and protecting the beauty of the northern part of the state. The northern part of Wisconsin is a great playground of wonderfully interlaced rivers, lakes and forests. The protection of this region from fire and its redemption because of its effect upon the water power of the future, will save many times its invested value. It has been a difficult fight to maintain this and particularly since the Wisconsin constitution permits no state debt and the state by taxation must pay for this preservation to posterity of the wealth of the state. Wisconsin has dropped from first place in 1900 in the production of forest products to eighth in 1910, a greater loss than any other state. To check this loss is a great

task, for without a state debt the burdens are so heavy upon the tax-bearer that it is difficult to convince him of the wisdom of investing for the future. The ordinary settler who has a hard time cutting out a little home for himself in the new regions of the state is indignant at the thought of the state taxing him to preserve the forests. However, the total funds for this department now approximate $125,000 for the forestry department and the beginnings of a system of fire wardens and fire protection throughout the state. In spite of all opposition and considering all the circumstances, no state has made a greater advance in this line. So great indeed has been its progress that the United States government recently established on university land a forest products laboratory for the testing of wood products, an evident appreciation of what has been accomplished.

Conservation and educational development must be considered together. The schools and the university coöperate in this development and in the education and experimentation which lead to a sound public opinion on these matters. In the debates occasioned by the good roads bill, the university extension department sent out special debating material on every phase of the question. After a struggle reaching over many years, the bill was finally passed in the 1911 session in a form which will not allow petty sensational politicians

to control but provides for a scientific distribution of state aid to roads as well as scientific aid in the construction of these roads. It will doubtless add millions of dollars to the rural values of this state in a comparatively short time. It is in line with the other great developments which have been set forth in this book. It shows that the people of Wisconsin are striving for that kind of legislation which will lead to both economic and social results. It will make the country better to live in and make the farmers better in an economic sense. It is a great undertaking for a state which has yet some ten million acres of unoccupied land.

CHAPTER VI

Labor, Health and Public Welfare

Under the management of Mr. Halford Erickson, the labor bureau of the state of Wisconsin was developed so that it ranked with that of New York and Massachusetts. Sound laws for the protection of life and health were enacted. The child labor law was a great advance in such legislation. It remained however, for the 1911 session of the Wisconsin legislature to enact a code of labor legislation which puts the work of this body ahead of any other in the country. Besides the numerous laws for the protection of life and health and the better conditions for women in factories, there are two laws which are worthy of comment; the first of which is the workmen's compensation act, chapter 50, laws of 1911. The conflict over that act and the previous attempts upon the part of the legislature to modify the laws relating to contributory negligence, co-employment, the assumption of the risk, etc., form an interesting page in the history of Wisconsin. This state has only recently become a manufacturing state but the necessity of new conditions is sure to bring legislation in its trail. No doubt the humane spirit prevalent in the state and the whole enlightened attitude of the courts

tended to stimulate activity for betterment. The inadequacy of all old remedies for personal injuries was apparent to all. The labor bureau under the direction of an expert from the university, made a scientific study of this question, which revealed such startling results that there was evidently but one course to follow, namely, to adopt some form of workmen's compensation or industrial insurance. As Chief Justice Winslow of the supreme court said in the decision recently rendered, in which the constitutionality of this law was upheld: —

"Legislate as we may in the line of stringent requirements for safety devices or the abolition of employers' common law defenses, the army of the injured will still increase, the price of our manufacturing greatness will still have to be paid in human blood and tears. To speak of the common law personal injury action as a remedy for this problem is to jest with serious subjects, to give a stone to one who asks for bread. The terrible economic waste, the overwhelming temptation to the commission of perjury and the relatively small proportion of the sums recovered which comes to the injured parties in such actions, condemn them as wholly inadequate to meet the difficulty."

The Wisconsin workmen's compensation act is an excellent example of the careful way in which the leaders in Wisconsin work. The agitation was started by the labor element. After several years of discussion a committee, headed by an able attorney, A. W. Sanborn, was appointed by the legislature of 1909. This com-

mittee did not hesitate to use the best available aid. Through expert help, the device of depriving the employer of certain of his defences, permitting him to accept certain terms by which he agreed to give compensation, was inaugurated. This was a powerful constitutional device, more powerful than it seems at first. The employer may, if he wishes, run his establishment under the employers' liability plan and take the risk of a suit for damages in the courts or elect to come under the law by which his common law defences are practically all taken from him. The point is, he is not compelled to accept the compensation plan unless he so chooses but it is obviously to his advantage to do so. New York had taken the other step and enacted a direct law for compensation which was declared unconstitutional by the courts because of its compulsory features, involving the taking of property without due process of law. Is it possible under the constitutions of the states or the United States to impose upon an employer the duty of paying to an employee so much for an arm or so much for an eye without having the case come to trial in the courts?

The Wisconsin men saw that it was not only a question of the constitutionality but also a question of the prevention of litigation. The question whether the direct or the indirect method will prove most effective in America has not yet been decided, but nine states at

this writing have followed the Wisconsin indirect system. Let us consider for a minute the advantages of this plan. Suppose that the employer does not elect to come under the new law but appears before the court on a question of neglect. The courts will say to him, "Why did you not come in under the act? If you wanted the protection of the act, all you had to do was to accept its provisions." As a result the employer is going to be dealt with harshly because he did not come under the act. Suppose on the other hand, that the employer comes under the act and then tries to quibble or form a case upon a legal technicality. Immediately, the court will say to him, "You accepted the provisions of this act with your eyes open. You accepted the jurisdiction of the arbitration board which is set forth in the act and the standards which it establishes." Consequently there will be a discouragement of litigation and after all, for what is a workmen's compensation act enacted if not to decrease litigation? The legislature abolished the great body of protection, due to legal technicalities and precedents built up around the employer and based the reward upon the findings of this industrial court. The aim of the law is to prevent litigation and an indirect system accomplishes this more effectively than a direct system. The latter imposing a club over every industry, will have to be carefully construed by the courts and that means litigation in the end.

The men who formed the Wisconsin idea were first confronted in the workmen's compensation act with the problem of taking either the English act or the German system as a basis. At first they were inclined to adopt the English system but they found that if they did so there would be serious complications confronting them. Persons connected with the investigation went to England and Germany and studied the actual conditions in the great insurance departments, in the hospitals and in the factories. They also compared the conditions of England and Germany and transmitted to the committee their findings. It became apparent that in England, the entrance of a third party (the insurance companies) created a condition which was not a wholesome one. The third party did not care about the laborer or the capitalist; its interest was purely financial; its object was to conduct the business with the least cost possible and to derive the greatest dividends therefrom. A great deal of litigation as well as dissatisfaction was found in England. There the insurance companies had many hangers-on, doctors, lawyers, etc., the cost of whom had to be met in some way, while in Germany the direct relation between the manufacturer and his employee led to a mutual basis of respect. In England it was not uncommon to find that if a certain company had old men in its employ, the insurance companies would raise the rate unless the firm disposed of them.

The German system, based upon an entirely different idea of a more humane nature, led the manufacturer to keep his employees and to care for them and when they were old they were certain not to be cast out. The mutual good feeling between the manufacturer and his employee was thus greatly enhanced by the German system. Those who studied the conditions in Germany convinced the committee that it would be a wise thing for the state of Wisconsin to adopt as far as possible the German plan. The litigation was less and the courts were especially adapted for the curtailment of litigation. An adaptation of the arbitration court scheme of Germany was practically adopted in the Wisconsin law. The committee went further and recommended the adoption of some mutual basis, providing a device in the bill for carrying it out.

The manufacturers of Wisconsin, mostly of Germanic descent and the employees many of the leaders of whom were also of German descent, gave the utmost coöperation in the drafting of this bill. The men sent abroad learned that the splendid system of insurance in Germany for sickness, old age, accidents and invalidity was really an asset and not a liability. A German manufacturer in Cologne gave the writer the following as a basic idea of the new economic philosophy existing there. If in America you want to invest $200,000 in a manufacturing establishment, you put it all in the

factory. It has gradually been found in this country that this is the wrong method; the right way is to put $100,000 in the plant and $100,000 in the men who run the plant. If you can promise a man who comes into your employ that he will have a clean, bright place in which to work, that he can get married and bring up children because, if he is hurt, you will provide for him; in old age that he will be cared for; that if he is sick he will receive some benefit from you and that his growing children will receive industrial education which will fit them for the work of society and not leave them drifting, masterless men, you will have no difficulty with your employees. It is not strange that this philosophy was brought into the Wisconsin law for workmen's compensation, because the idea had already been adopted that the state must protect and invest in the life and happiness of the individual in order that the greatest prosperity might come from it and that security, peace and happiness are the best foundations of good government and prosperity. Those who had been taught by John Bascom and Richard T. Ely of the University of Wisconsin understood well these doctrines and accepted them.

The manufacturers, the working men of Wisconsin and the men who understood the Wisconsin idea, went even further than this. They bethought themselves of the scheme used in the railroad commission act, in the

public utility law and all other similar legislation. If you can make a standard of reasonableness to fix a rate upon railroads, and then establish a body of men to see that the rate is carried out, why can you not apply the same thing to health, life and the sanitation of our factories? So they passed the industrial commission act and gave to the industrial commission the administration of this work. This act, instead of specifying one hundred and one different kinds of belts, nuts and screws which might cause injury, requires all factories and places of employment to be reasonably safe and hygienic.

The law is considered by many the greatest piece of legislation yet put forth in Wisconsin, and one which may be a long stride toward the solution of the whole industrial accident problem in America. Many humane manufacturers willing to do much for the betterment of conditions of life and health, are irritated by legislation good in its intention but so awkward in its construction as to be practically unworkable. The fixing of standards of life and health is just as easy as the fixing of valuations for rates of the price of gas or any other utility, and it is much better for the manufacturer and the public at large that there be some scientific or expert service in the standardization. This in itself would seem to be a cure for a large part of the lobbying which is now done in the legislative halls. A new in-

vention often makes it impossible for the manufacturer to obey some inflexible and awkward law, whereas a body of scientific men who can fix standards, and require safety devices which are workable, is much more practical. These experts can provide a museum of safety devices all of which are tested and require the employer to use such devices. Think too, of the saving in insurance. The reduction of the cost of the maimed, killed and wounded in any mutual insurance company will show whether the system is to be a success or failure. The actuarial, technical experience gained in this way will be of great use in cheapening the actual insurance in the workmen's compensation act besides providing for the prevention of accidents and more humane and better conditions.

The following excerpts from the law will indicate how it approaches the general form of the railroad commission and public utility acts. It fixes certain standards for the commission to administer, throws the burden of proof upon those who object to its decisions, and provides a very simple procedure.

"Section 2394-41. (2) The term 'employment' shall mean and include any trade, occupation or process of manufacture, or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged, except in such private domestic service or agricultural pursuits as do not involve the use of mechanical power. . . .

"Section 2394–48. Every employer shall furnish employment which shall be safe for the employees therein and shall furnish a place of employment which shall be safe for employees therein and for frequenters thereof and shall furnish and use safety devices and safeguards, and shall adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety and welfare of such employees and frequenters.

"Section 2394–49. 1. No employer shall require, permit or suffer any employee to go or be in any employment or place of employment which is not safe, and no such employers shall fail to furnish, provide and use safety devices and safeguards, or fail to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and no such employer shall fail or neglect to do every other thing reasonably necessary to protect the life, health, safety or welfare of such employees and frequenters; and no such employer or other person shall hereafter construct or occupy or maintain any place of employment that is not safe." . . .

The commission is empowered:—

"Section 2394–52. (3) To investigate, ascertain, declare and prescribe what safety devices, safeguards or other means or methods of protection are best adapted to render the employees of every employment and place of employment and frequenters of every place of employment safe, and to protect their welfare as required by law or lawful orders, and to establish and maintain museums of safety and hygiene in which shall be exhibited safety devices, safeguards, and other means and methods for the protection of life, health, safety, and welfare of employees.

"(4) To ascertain and fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption of safety devices, safeguards and other means or methods of protection to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life, health, safety and welfare of employees in employments and places of employment or frequenters of places of employment.

"(5) To ascertain, fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe.

"(6) To investigate, ascertain and determine such reasonable classifications of persons, employments and places of employment as shall be necessary to carry out the purposes of sections 2394–41 to 2394–71, inclusive. . . .

"Section 2394–59. 2. Every order of the commission shall, in every prosecution for violation thereof, be conclusively presumed to be just, reasonable and lawful, unless prior to the institution of prosecution for such violation an action shall have been brought to vacate and set aside such order, as provided in section 2394–68 of the statutes."

The mutual insurance portion of the workmen's compensation is that which makes it really powerful and in the end, economical and just. Every state in this country adopting a workmen's compensation law will have to provide some such arrangement before thoroughly good results can be obtained.

The following extract from the report of the committee is given at length because of the great importance of this feature.

"Industrial insurance is the name most commonly applied to workmen's compensation acts, and conveys the meaning that there is some plan of insurance. In the first tentative bills of this committee, the plan of insurance was brought forth, but after full and mature discussion it was decided that it would be better to leave the employer free to determine for himself the best means of taking care of the liability created. The committee felt that to lay down a plan of insurance would be to put on a limitation that might handicap employers and leave them at the mercy of a certain class of insurance companies. We recognize the great benefits to employees of what are known as sick, accident and death benefit societies now in effect in many large institutions, and we much prefer to leave this whole matter open in such a way as to encourage the formation of these sick, accident and death societies. Under section 26 we have given to employers an opportunity to organize, under the laws of this state, mutual insurance companies to carry the new risk. Strong mutual insurance companies clearly have been shown to be the cheapest, safest, and most reliable method by which the risk herein created can be taken care of."

In this way it was suggested that the German system could be carried out. By modifying an old section of the statute this was easily established in the law. The provisions of the workmen's compensation act relating to this most important arrangement both for the economy and the humanity of the whole scheme, is contained in the following section:—

"Section 2394–26. Nothing in this act shall affect the organization of any mutual or other insurance company, or any

existing contract for insurance of employers' liability, nor the right of the employer to insure in mutual or other companies, in whole or in part, against such liability, or against the liability for the compensation provided for by this act, or to provide by mutual or other insurance, or by arrangement with his employees, or otherwise, for the payment to such employees, their families, dependents, or representatives, of sick, accident, or death benefits in addition to the compensation provided for by this act. But liability for compensation under this act shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer; and in addition thereto, the right to enforce in his own name, in the manner provided in this act, the liability of any insurance company which may, in whole or in part, have insured the liability for such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid, and provided further, that as between the employer and the insurance company, payment by either directly to the employee, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

"Section 2394–27. Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void. No company shall enter into any such contract of insurance unless such company shall have been approved by the commissioner of insurance, as provided by law. For the purposes of this act, each

employee shall constitute a separate risk within the meaning of section 1898d of the statutes."

It will be noticed that it was by making each employee a *separate* risk that the old mutual statute was applied to this act.

Under this section mutual companies are now being formed with a fair degree of rapidity.

Here then, we have two laws, the workmen's compensation act and the industrial commission act, based upon the fundamental Wisconsin idea and made practical by the devices which were used in the railroad commission and the public utility act. It will be seen that the same procedure by which the aggrieved party had his right in court under the earlier commission acts, gave the aggrieved party that same remedy under the industrial commission and the workmen's compensation act. After all, it is a court question, a matter of contract just as in the railroad and public utility acts. No matter how many rights may be given the employee under any modification of the fellow-servant or contributory negligence doctrine, the poor fellow was obliged to go into court and ask that compensation be given to him. Delay was the inevitable result of going into court. He could engage attorneys to fight the case for him but meanwhile he could starve. The result has been that by the constant appeal from court to court and the slowness of justice, the man who apparently had justice

on his side, never really received it and either had to compromise or take the moiety which was thrown to him at the end of the litigation. The workmen's compensation act is a means of giving not only a certain remedy to the aggrieved party but it is another example of the state standing behind the poorer man in litigation and making smooth the path for him so that he obtains justice.

It must not be forgotten that the apprenticeship and the industrial education acts already mentioned furnish powerful allies for the above laws. A systematic attempt will be made under these acts to teach workers how to preserve life and health. Without the coöperation and intelligence of the worker himself, much will be lost in the campaign of prevention and the legislative committee on industrial education had this well in mind when they drafted the bills which to-day may be called a part of the above code.

The state has a well organized Board of health with a vital statistics division which coöperates with the school of medicine at the university through the experts and laboratories especially established for research into disease.

This combination between the university and the Board of health is leading to good results. Already a Pasteur institute has been founded in connection with the state hygienic laboratory at the university. Over two hundred patients have been treated there and all

but one have been saved. More than 4250 packages of diphtheria anti-toxin have already been distributed and typhoid anti-toxin is now also being dispensed. Coöperative investigations are constantly being made by these two state organizations.

Through the efforts of the Wisconsin anti-tuberculosis association a state sanatorium for consumptives was established and at the 1911 session of the legislature a law granting state aid for a county system of sanatoriums was put upon the statute books and the Board of health is making strong efforts to effectually enforce it. A medal which was offered by the International anti-tuberculosis association to the state or country having the best law for the prevention or control of tuberculosis was awarded Wisconsin in 1908. The Board of control with its system for the care of insane and criminal and delinquent classes has been used as a model for several states and is on a high plane. Dairy and food laws have contributed to the cleanliness and quality of the dairy industry of the state and have assured state protection in the matter of food products. J. Q. Emery, the dairy and food commissioner, fortified by chemists from the university, has stood without flinching, a fire of criticism perhaps as great in a way as that directed at Dr. Wiley.

The state has expended large sums in all these lines — but it has been well used. Every cent of it is an investment which is now yearly bringing back many times its amount.

CHAPTER VII

Administration

It may seem strange at first glance that the system of appointive offices meets with so much approval in a state where there is such confidence in democracy and where the direct primary election is in favor. This is easily explained; the primary election is practically applied only to the executive officers and to those who legislate and formulate policies. The fact that the insurance commissioner has been made an appointive officer and that the election of judges and state superintendent of public instruction does not coincide with the regular political elections, together with the efforts which doubtless will be made in the near future to withdraw the attorney-general, the secretary of state and the state treasurer from political elections, shows that the people are slowly working towards a distinction between those who determine a policy and those who are chosen for administrative or technical skill — as servants merely to carry out the will of the people as expressed in the law. Thus the appointive commission is an aid to democracy. There is no inconsistency in these two principles.

Although the principles of the short ballot have not been acknowledged in this state, the generally accepted principle has been that the legislature determines largely what is to be done and delegates the administration to some technical or scientific body. The appointive commission is an essential in the Wisconsin idea. As a rule these commissions are non-partisan or bi-partisan. They are appointed for long periods of time, receive good salaries and are given expert help. In very many cases, these commissions are permitted to fix the salaries of their employees thus further centralizing responsibility with these bodies. They are protected also — and this is a very important point — by continuing appropriations.

The commissions are seldom paid small salaries; they are either

(1) well paid; or
(2) not paid at all.

Well paid commissions, composed of men of talent and honorary or ex-officio commissions with expert help, have proven successful but when the compensation is small, the service is hampered by inefficient men. The writer well remembers one case in the legislature when a small group of men attempted to fix the salaries of a commission just low enough so that very good men could not be secured and yet just high enough to provide jobs which they themselves could afford to accept.

Unfortunately, there are still some commissions of this kind but they are rapidly disappearing.

Good laws are ineffective unless accompanied by good administration. Good administration is impossible unless combined with ordinary business methods and the latter are not compatible with the policy "to the victors belong the spoils." If any praise is due the Wisconsin laws it is probably because of the appointive commissions, the non-partisan spirit, the expert and the effective civil service law. The non-partisan spirit has become a tradition. In an overwhelming republican state, at one time the chairman of the civil service commission, the chairman of the tax commission and the chairman of the railroad commission were democrats. Of the members of the supreme court the majority are, perhaps, democrats. The civil service law and the non-partisan spirit are inherent in the very life of the state of Wisconsin, therefore it is not surprising that congressmen and United States senators from this state have carried the same spirit into national affairs and are found frequently "lining up" with one party or the other, as the issue demands.

It is very natural, considering all the facts previously considered, that civil service should be a doctrine of the state of Wisconsin.

The German believes in merit. During the session of 1911, when certain members tried to repeal the civil

service law, members from the German districts upheld it strongly. One of the assemblymen from Milwaukee said, "We Germans believe in civil service; we believe in merit and fitness; we believe that men should be educated for administrative duties; we do not like 'pull' in state business." There is no doubt but that the German prefers attaining public office under civil service to any other method. It is strange but true, that in the German state of Wisconsin, a German governor has never been elected, as the old German stock in general dislikes political strife and wire pulling. The German believes that public officials should be educated so we have a great basis for civil service principles in the temperament of the state.

The power of the commissions as herein outlined must seem to the reader to be fraught with danger. Centralized machinery has been dangerous in the past and continues to be so unless the temptation for political juggling is removed. Such concentration of power should not take place without the addition of the non-partisan spirit and an efficient civil service. Any state which may wish to follow Wisconsin by adopting its highly centralized plan is hereby warned in order that they may have proper conditions in which to establish a scheme which gives so much power into the hands of a few experts. Suppose after having planned these elaborate laws calling for statisticians, accountants, actuarial

experts and skilled workers of all kinds, that there was no standard fixed for these men. Suppose that the politician says to a commission that he knows of a good accountant who is a good political worker it is true, but who has worked in an accounting office and hence had better be employed; it can readily be seen that the administration of these laws might be a farce and that the offices would be vacant after every political election. If the Wisconsin program is to be followed, it must be taken in its entirety or not at all. If power is granted at all, it must be given in liberal doses in order that there may be efficiency. Mark well every step in this matter. The commissions are so constituted and the terms of the members are so arranged that no two of them retire within the same year; they are thus protected from the desires of any one governor. They are restricted by carefully worked out methods of bookkeeping and publicity and are hedged about by strict civil service requirements and if positions of an expert nature are exempted, they are carefully selected and exemption is grudgingly granted by the legislature only on the grounds of great necessity and upon convincing evidence as to this necessity.

It may seem that this is a complicated and costly system of government, an undemocratic, bureaucratic government and as such criticisms are not without real value, the whole subject demands some frank discussion.

There is no infallible kind of government. Commissions do not depend merely upon the men but also upon the checks and spurs which sustain the integrity of the whole system. If it is a scheme although seemingly contrary to our ideas of democracy, which really carries out absolutely and surely the will of the people, it is an aid to democracy. How in this complex, economic life are we ever going to use any other machinery? We have tried to fix tariff rates by congress and we have found that with the little time and knowledge possessed by each member, with the juggling of interests throughout the country, it seems an impossibility. If rates are being fixed in the chaos and hurry of the legislative session, is it any wonder that the courts have to interpret and many times destroy the results of this guess work? Is it any wonder that the business man is afraid of a legislative session when every bolt or screw in his machinery may be regulated by impractical laws or matters of actuarial skill be determined in a few moments in a legislative committee, or the price of gas or some other thing equally scientific, regulated in an equally crude manner?

Such a system cannot survive and it is merely a question of what system shall supplant it. That we will have to use a commission system of some sort is shown by the ordinary business arrangements of life. If a city owned a municipal baseball team, imagine

the city holding a public election to elect a second baseman or attempting to fix certain items of bats and balls! The only sensible way would be for the city to determine whether or not it would have a baseball team, to set the necessary limit upon expenditures for such a team and to direct the council executing the will of the people, to secure a manager who would be the responsible director. Any common experience in life illustrates the same principle. We must have an administrator for any special line of endeavor and give to him the responsibility; commission government seems to be the best method to extend the legislative power scientifically, and the only way also of using judicial determination in great economic questions confronting the people. Dislike it as we may, we will have to employ it nevertheless — and that more and more frequently as economic life becomes more complex. Indications are that legislation for the future on great economic questions will be based upon a broad determination of policies by a legislative body, the carrying out of which will be intrusted to efficient servants and experts, responsible in every manner to the representatives of the people and the people in general.

There is a form of government still existing here and there in the world which gradually is being discarded for the good of all mankind — that of the unlimited monarchy. There have been good and great kings who

have accomplished as much or perhaps more than any republic but the good king died, a tyrant succeeded him and the nation retrograded. The individual may have been right but the system as a system, covering a long period of time, was wrong. The same thing is true of this growth of commissions. They should be circumscribed by all the checks and balances of representative government. If great power is given to them they should be restricted and made so accountable to the people and their representatives that if they are weak or inefficient the machinery, like that of a republic itself, will be so well constructed that it will tide over such a condition until better men can be secured. A newly appointed commission is usually stronger than one more firmly established — when its fight has been won. It is well then to remember that in its creation, its powers should be closely defined and safe guarded, so that it has a continuing strength not wholly dependent on the personality of the commissioners and yet is so checked that the white light of public opinion may penetrate into its innermost recesses at any time. If all the eggs are placed in one basket, it is well to watch that basket.

The commission plan is not perfect in the opinion of the author and he has stood almost alone in advocating certain additions and restrictions. In spite of vigilance, the stiffness and red tape of the bureau may eventually appear. Commissioners may in time have a tendency

toward making their decisions come so safely within the decisions of the courts that no litigation results, because the persons affected are satisfied — sometimes too well satisfied. Justice is sometimes more thorough when it involves conflict and it is a healthy sign to see cases contested in the courts once in a while, with the commissioners on the one side and great corporations on the other. Of course, public sentiment bearing upon the commissions may make them somewhat arbitrary in their methods. If so, the courts will protect the corporations involved. But if a legislative law or a rule of a commission is always modified so that it comes within the court decisions and precedents, no progress will ever be made for real justice — indeed, it will result in a gradual retrogression and in the end, confidence in the system will be lost. There are certain kinds of progression in legislation, the results of which in relation to constitutionality as construed by the courts we cannot foretell and occasionally there must be encroachment upon precedent so that the subject may come before the courts in as good an economic light as possible. Similarly, there are certain decisions in commissions which have to be made boldly so that the aggrieved parties will use their entire powerful machinery in the court. The writer believes this to be a wholesome process and no commission should be afraid to boldly progress so that occasionally its decisions will be submitted to the courts.

Again, while some commissions may grow sluggish, others may be inclined to become arrogant and bureaucratic towards their masters — the people. There should be some means whereby commissions may be called before the legislature in the same manner in which members of the English cabinet are subjected to questions or interpellation in the British parliament.

Sir Courtenay Ilbert, in his book "Parliament; its History, Constitution and Practice," 1911, p. 113, says of this device:—

"Asking questions in the house is one of the easiest methods by which a member can notify to his constituents the attention which he devotes to public affairs and to their special interests. For this and other reasons, the right to ask questions is specially liable to abuse, and its exercise needs careful supervision by the Speaker and those acting under this authority. But there is no more valuable safeguard against maladministration, no more effective method of bringing the searchlight of criticism to bear on the action or inaction of the executive government and its subordinates. A minister has to be constantly asking himself, not merely whether his proceedings and the proceedings of those for whom he is responsible are legally or technically defensible, but what kind of answer he can give if questioned about them in the house, and how that answer will be received."

A proceeding of this kind would be a protection to both the commission and the public. The writer has often heard some legislator questioning the wisdom of commission administration because of derogatory state-

ments and criticisms which had been presented to him. If asked why he does not go directly to the commission and find the truth, he invariably replies that when he did go to that office he met a crowd of experts who could prove anything to him and things were so complicated that he only made a fool of himself. This man however, would feel much stronger if we adopted the European policy and called the commission before the legislature. He would be bold and they would be on the defence. As Sir Arthur Cunningham of the British home office remarked to the writer, "If old Maggie Malone of County Cork does not receive her old age pension we may be called upon to give the reason." The author witnessed John Burns undergoing a severe test before parliament one day and consequently has great respect for the question as a vigorous expedient to apply to some of these new commissions which are coming into existence, not only in Wisconsin but all over the country.

In the case of the proposed Interstate trade commission, supplementing the Sherman anti-trust act, the members should be subject to recall by a majority vote of congress. It is the belief of the author that sooner or later such a plan will be developed in addition to the program which has been laid down in Wisconsin. When all is said, there is no sure cure-all in commissions. It is a good thing once in a while — not too often — for the

legislature to overturn their rulings. It keeps them active and vigilant, for there is a wisdom in the multitude which is greater in the long run, than that of any body of experts or judges. In the legislature there is a certain wisdom and as a result, bulwarks have been built up for the liberty of the human race which no doctrinaire theory of law or no worn-out precedent can give. Our common law, in a broad sense, came from the customs of the people and it is significant that in the establishment of the modern machinery, which is really putting into practice the truest ideals of the common law, there has been more real virility and strength in legislative enactment than there has been in the wisdom of judges.

When one pauses to consider the long line of sufferers from accidents who have come into the courts of America and remained there for years, the long litigation over the trusts and almost every right which is possessed by the people to-day in theory and not in fact, can we say that the judges have been wise, or that the American legislature has been unwise? It is true that in thinking of the learning and ability of the judges we may be tempted to say "Here are men versed in the law; why not turn the matter over to them?" There are men in our legislative halls and our colleges who believe that the only legislation is that made by the judges. Upon looking over this whole situation it seems that we should

have renewed confidence in the legislature and the people. After all, there may be some truth in what Talleyrand said to Napoleon: "There is somebody wiser than you, Napoleon and wiser than all your councillors; and that is everybody." And if we in America do not believe it, we do not believe in representative government. The same general principles apply to any small body however expert it may be. As John Morley says in his "Essay upon Guicciardini":—

> "It is not merely the multitude on whose wisdom you cannot count. . . . Perhaps Burke comes nearest to the mark: — 'Man is a most unwise and a most wise being. The individual is foolish. The multitude for the moment is foolish, when they act without deliberation; but the species is wise, and when time is given to it, as a species it almost always acts right.'"

The history of the past, the philosophy upon which this nation is founded should teach us the futility of placing in the hands of any group of men, power without responsibility and direct accountability. As experts they are entitled to protection and as we cannot well elect experts, we must select them but their work must always be subject to the great common sense which was recognized by the fathers as existing in popular control.

No state should attempt the regulation herein described without securing the highest type of public servant to do the work and it must expect to pay well for it.

To adopt the Wisconsin plan of controlling the vast interests which are included in these laws, while at the same time paying starvation salaries for experts, would be to invite failure from the moment that these laws were enacted. Nothing in political life to-day, in the opinion of the writer, has done more to bring inefficiency in public service everywhere than the poor salaries paid. We are wondering why the state cannot be as efficient as a private concern when the private corporation will pay three times the amount for like service in public life. No civil service law however good, can cure inefficiency coming from this source. A state can never make something out of nothing. Not only the poor salaries paid but the poor adjustment of salaries is a contributing cause. In Wisconsin fortunately, the great commissions have to a great degree the power to fix the salaries of experts and this has been the means of securing much efficiency. If we give responsibility to commissioners, surely we ought to trust their judgment sufficiently to allow them to fix the salaries according to ability. In the minor ranks of expert ability also, something will have to be done throughout our government to attract to the public service the same efficiency which enters into private business.

If private business can afford retirement funds for old men, surely it would be a good investment for the government to have something similar. If it is not good

policy for the private industry to retain old men and women, worn out in office service and hindering quick, efficient results, neither is it good business for the government. Efficiency demands the best and public servants should be as well protected as private servants. Some kind of promotion in every rank of public service should come if public efficiency is to equal that in private service. How ridiculous it is for congress or any state to strive to fix the salaries for the different clerks in different departments by legislative action and yet hold the commissions responsible for the work of these clerks! If a great commission is capable of fixing the rates for gas or electricity, surely it is equally capable of fixing the salaries of a clerk or a stenographer, especially when restricted by a civil service law.

Fundamental to the responsible commission and to all good administration of our laws is a study of the principles of administration. Our young men must be trained for public service as in the European countries. That there is a science of administration has been seemingly unknown to the American public until very recently. How could it be otherwise with the doctrine of the spoilsman as the most important thing in our public life? The sense of duty, permanency and scientific methods in office had to be realized first. This realization was brought about through the education of the people.

Few of us realize to what extent preparations are

made for legislation in Germany. A recent statement by one of the Prussian statesmen shows that half the members, not only of the imperial parliament but also of the various state parliaments, were men who had received some training for their work and most of the officers, in fact nearly all of the administrative officers in Germany, are especially educated for this important work.

The German university is the usual channel through which this training is acquired, whereas in America the university man is sometimes looked at askance if he utters an opinion upon a public question. In Germany, says a recent report from the German minister of education, it is the duty of the university "to give opinions of all kinds regarding scientific questions falling within their province, or for working out important problems concerning public life." It is not surprising then, that the expert is welcome in a state like Wisconsin where Germanic standards and Teutonic blood, whether Scandinavian or German, are so prevalent.

The science of administration seems only to have begun in America. The pioneer work done by the New York bureau of municipal research, which is influencing many of the cities of the country and is now touching the federal government through the Bureau of efficiency and economy under the efficient management of Dr. Frederick A. Cleveland, shows us a new field for the

expert; the expert in investigation as well as in the preparation and the administration of laws. If there is one thing which the Ely school of economics seems to have brought into our life it is the spirit of the German school, which inspires one to look not to theory but to the actual affairs of economic life. So we are looking for advice now, not from discredited followers of the old theory of the classic school but to the teachings of men like John R. Commons, B. H. Meyer or Richard T. Ely. It is true that we are not changing rapidly enough and that we are too prone to take the advice of the undiluted type of professor of the old school who has not been tried in the laboratory of public life and who often proves to be a dangerous man. He who is lost in his theories is often as bad an advisor as the most corrupt politician; his guidance often leads into realms in which there is no real knowledge and which bear no practical relations to real life. A reasonable hesitancy in choosing an expert at the present time will accomplish a great deal for good government. The land is full of men with doctrinaire theories who have never studied the actual problems of government at first hand and who, if received with open arms, may do so much harm to the work of the real student of government that a serious retrogression will occur in the construction of any science of administration. A so-called expert who has not given time and attention to economic ques-

tions at first hand and who does not possess the very necessary elements of common sense, should be shunned by every true student of government. There is no royal road to true helpfulness — the scholar must become useful by strenuous application and be able to prove his theories by the hard facts of actual events. Says a recent article in the *Atlantic Monthly:* —

" Plato has well stated the expert's view of the matter in saying that when you want to take ship for Delos you hire, not a shoemaker or some other amiable citizen, but a pilot; to which the democrat is constrained to answer, ' Most true, O Plato; but forgive me if I suggest that it is I that am going to Delos, and that the necessity is thereby placed upon me to judge of the pilot's capacity to take me there; that I am therefore, by this necessity, constrained to seek such evidence as may be convincing to my own humble and limited intelligence, both, upon the one hand, as to whether the pilot is a pilot in truth, and also, upon the other, as to whether he intends to take me to Delos and to no other place. You will, perhaps, remember my cousin who took ship, indeed, for Delos, but was landed in Crete, and my aunt who, having made a similar arrangement, was never landed at all. Forgive me, therefore, if, with your kind permission, I make a few trifling inquiries, such as in this matter seem to me to be necessary, before I go aboard.' "

Those who wish to adopt Wisconsin methods in other states should subject all "experts" to a "few trifling inquiries."

The development of a high type of trained expert is a still further necessity when one considers that the lobby

and influences which great corporations have used in the past, in connection with legislative bodies, may be transferred to the accountant. If an accountant computes the rate, basing it on an intricate system of valuation, cost of the service, etc., the powers that are interested will try to reach the accountant. We should fortify our service by employing men who have had the right instruction; whose teachers were such men as know fire when they see it and who maintain not only the highest ideals of public service but who supply their students with that insight into the methods by which legislation is actually checked or defeated so that they too will know fire when they see it.

In the choosing of men through civil service it will be well to remember that a civil service commission is subject to all of the frailties of a commission. The whole plan may go wrong if that source is not watched and subjected constantly to the light of public criticism. The kind of examination which must be passed determines in the end a large part of the efficiency of the individual. Fortunately commissions have realized that the ridiculous examinations of twenty years ago when book knowledge was made the standard cannot longer command the confidence of the people and they are gradually modifying examinations so as to bring the elements of personality and executive ability to a greater prominence than mere memory.

There is still room for improvement, especially when it comes to expert service of a very high order — the service which needs men whom the position must seek, the men who will never take examinations.

At the present time the harmonious coöperation between the Wisconsin civil service and the state commissions in selecting men of this type bids fair to solve the problem although in the past there have been some contentions over such matters.

China is the greatest civil service nation of the world but the spirit of the bureaucratic autocrat or the Chinese scholar must not be allowed to creep in here. There are signs that thinkers in this line — and it is particularly true in Wisconsin — are alive to this danger and stand ready with remedies for it. Because something went wrong once in some part of the world is no reason why it should go wrong here now — indeed quite the reverse, especially when history is studied as carefully as it is to-day.

Recently we have seen wonderful results from the new studies in business efficiency. Dr. Frederick A. Cleveland was probably the first man to apply this idea to the administration of governmental institutions. The work of the New York bureau of municipal research showed that certain definite responsibility could be fastened upon public officials, the cost of service standardized and efficiency records established.

Dr. Cleveland tells of thousands of people watching the record of a baseball game as it was reported on the wall of a newspaper office. These people were standing in the street watching *what?* Simply an *efficiency record.* Every move of the men on the baseball field was noted, every error and every score recorded. A record of the year's games was kept by means of which the best men stood forth, men recognized as the most efficient in baseball. The lesson for public service is obvious.

We cannot attempt to regulate railroads or great public utilities unless our public service is in itself so organized that it has a thorough understanding of the intricate systems of cost accounting and efficiency used by these great economic units. We must have efficiency of service in order to assure efficiency in administration. As Professor Ely says, "Apart from the question of the simple difference in economic strength as between the contesting parties, we have the question of skill on the two sides." Now if rules and regulations are to take the place of miscellaneous law, they must be made by trained workers; they cannot be made by ordinary elective officials of the old type; they must be made upon tests, measurements and close observation. This is as much of a science, as great a work and demands as high an education, as any work now known in human endeavor. It is surely a great undertaking for the uni-

versity to teach administration of this kind, teach not only the accounting principles of it, but the formulation of the legal basis of it, the relations of the jurisprudence and the statute law, and the entire methodical and scientific standardization of efficiency methods. What will work in business will work in the state, if applied with true knowledge of political science.

Expert help in administration should be freely recognized and men trained for it in our colleges should be used in our government. The state of Wisconsin has frankly recognized the expert in all these matters and is trying to persuade bright young men from the graduate schools of the university to do voluntary work in the study of these different departments, so that they may be prepared to fill their places in this new service for government. This does not mean a change in the making of the law nor the domination of legislation — it merely means that there is a capable servant at hand to carry out the decree of the people in an efficient manner.

Granted that the legislature is fearless and honest and fully able to control the most powerful commission, the question of regulation resolves itself into a half-dozen concrete, vital elements, — the accountant, the statistician, the actuary, the chemist, red blood and a big stick.

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CHAPTER VIII

The Legislature

In considering the work and procedure of the legislature, it may be of interest to describe the peculiar conditions in Wisconsin. If the legislative product was to be effective, the actual business methods of the legislature had to be reorganized; this fact seems to have been recognized by the leaders. The reform of the legislature in this direction has been remarkable; the credit belongs not to any one faction, for this reform was due primarily to the decided legislative opinion that conditions should be improved. Eleven years ago there were about seventy women employed to engross the bills of the legislature in long hand; there was scarcely a typewriter used. Scraps of paper were often passed up as bills to the speaker's desk. The place was full of useless employees, many of whom never did a stroke of work. It was absolutely impossible to tell how many bills amending a certain section were before the legislature. There were no checks as to accuracy. The halls were crowded with lobbyists. It was easy for a country member to find an attorney to draft a bill for him for a small fee, especially if the bill was aimed at some corporation

which could later be approached by the attorney. There was no organized method of placing information on any particular bill before the legislator, nor was there any impartial or skilled assistance in the drafting of bills for the honest legislator who knew nothing of law. If hearings were held, no one save the lobbyists knew when they were scheduled. The great corporations were obliged to have lobbyists on the ground to keep them informed as to the prospective legislation. If these lobbyists found nothing which would harass their employers, they frequently took the trouble to see that something was introduced which would so embarrass the corporations in order that they might continue to hold their jobs and obtain more money to spend. The "hold up man" was prominent; one man every session brought a trunk full of "strike" bills to be distributed among his loyal supporters. The hotels and saloons flourished and there was much money in evidence.

A lobby law was passed which tended to lessen the confusion on the floor. In 1903 male stenographers and printing were substituted for the women copyists, which change resulted in great economy. During the 1911 session, the improvement under the strict rules as laid down by the speaker in the assembly was very great and insured orderly and businesslike proceedings. Engrossed bills were printed and placed upon the desk of each member; if a legislator found errors in his bill,

he could immediately stop its passage to the governor and have them corrected. This reform removed one temptation to corruption. The governor at the same time secured an able attorney to examine bills before he signed them, so that if errors were found, they could be corrected before his signature was affixed. What he actually signed was one of the printed copies of the engrossed bills which were laid upon the desk of every member. Here were checks against mistakes in the passage and the final product, together with such watchfulness as would prevent dishonest clerks from inserting or removing something at the behest of interested parties.

With the coming of civil service, the clerical force was at once made more expert and fast, accurate workers were substituted for those who had obtained their positions by political pull. The amendments to bills were also printed and attached to the bills in the files, so that each member had a complete copy of the bill under consideration when he cast his vote. Paper, uniform in size, was provided and bills were required to be in duplicate upon introduction, so that while one copy was sent to the printer, the other was available to the house. This made it exceedingly difficult to steal, change or mutilate a bill by means of the old tricks of the past.

A bill drafting department was established in the

legislative reference department and the following rules laid down so that the draftsmen could not insert jokers into the bills.

"*Rules for the Drafting Room*

"1. No bills will be drafted in the Reference Room, A separate Drafting Room and a separate force have been provided.

"2. No bill will be drafted, nor amendments prepared, without *specific detailed written instructions* from a member of the Legislature. Such instructions must bear the member's signature.

"3. The draftsman can make no suggestions as to the contents of the bills. Our work is *merely clerical* and *technical*. We cannot furnish *ideas*.

"4. We are not responsible for the *legality* or *constitutionality* of any measures. We are here to do *merely* as *directed*.

"5. As this department cannot *introduce* bills or *modify* them after introduction, it is not responsible for the *rules* of the *legislature* or the *numbering* of sections either at the time of *introduction* or on the *final passage*.

"Legislative Reference Department."

The committees were gradually altered and adapted to meet the changed economic conditions and the type of legislation which was being passed. The following are the committees in the assembly of the 1911 session:—

Standing Committees of the Assembly

Judiciary	Transportation
Courts and procedure	Express, telegraph and telephone
National and interstate relations	Workmen's compensation
Constitutional amendment	Labor and labor conditions
State and economic betterment	Welfare of women and children
Elections	Public health and sanitation
Taxation	Purity of commodities
Excise and fees	Fish and game
Highways	Conservation
Agriculture	Commerce and manufactures
Agricultural exhibitions	Parks, playgrounds and city planning
Military affairs	City living conditions
Cities	Country living conditions
Towns and villages	Education
Counties	Vocational education
Capitol	Libraries
Printing	Legislative procedure
Charitable and penal institutions	Engrossed bills
Banks	Third reading
Insurance	Enrolled bills

A revision committee was created, with a civil service clerical force, to search all bills for technical errors. Records of sections amended are carefully kept so that confusion and duplication may be avoided. Bills are checked at every stage of passage by the clerks of this committee.

In order that all parties interested in legislation may be heard, the hearings of committees are by rule, scheduled in advance and a weekly cumulative bulletin is issued showing the exact status of each bill and its history up to the time of publication. This system of notification is not yet perfect but at least the business man or citizen interested in certain legislation receives some warning of hearings upon it. There is no secrecy in connection with these committees; they are compelled to report out each bill, with a recommendation together with a record of the ayes and noes of each committee hearing. Committees are all-powerful in an American legislature. The roll-call on a bill before the house does not always tell the story of its opposition or amendment in committee. The Wisconsin rule given below is not faultless but serves as a check upon the power of the committees.

"JOINT RESOLUTION No. 46, Laws of 1911, Relating to hearings before and records of committees of the legislature.

"*Resolved by the Assembly, the Senate concurring*, That there be added to the rules, a new rule to read: 29a. 1. The chairman or acting chairman of each committee of the legislature shall keep, or cause to be kept, a record, in which there shall be entered:

"(*a*) The time and place of each hearing, and of each meeting of the committee.

"(*b*) The attendance of committee members at each meeting.

"(*c*) The name of each person appearing before the committee, with the name of the person, persons, firm or corporation in whose behalf such appearance is made.

"(*d*) The vote of each member on all motions, bills, resolutions and amendments acted upon.

"2. Such record shall be ready and approved before the expiration of ten days after each committee meeting, or at the next regular meeting of the committee.

"3. Every committee hearing shall be open to the public.

"4. There shall be filed, in the proper envelope, with every bill or resolution reported upon, a sheet containing the foregoing information as to such bill or resolution, with a duplicate thereof to be filed by the chief clerk numerically by the number of the bill in such form

as to be most accessible for the use of the members and the public, during the session and at the end thereof in the office of the secretary of state."

Wisconsin has now added to its other machinery a permanent statute revisor. It is his duty at the close of each session to issue an annual volume bringing the statutes to date and systematically to revise them, chapter by chapter, submitting each chapter as revised, to the legislature for approval. The revisor of statutes and his assistants are now called in by the governor to examine all bills for technical mistakes before he signs them. This adds a further check on mistakes and will doubtless prove a step toward making our statute law a much finer and more dignified code.

Wisconsin has had a great advantage in its appropriation procedure, for all appropriation bills must receive the sanction of the joint committee on finance. This committee has practical control of the amounts apportioned and it has become so thoroughly a custom to "uphold" the committee, that its cuts are almost always maintained. This has led to great economy and particularly efficient adjustment of various appropriations. Of course, this committee withholds the bills until it sees their full content and until some estimate of revenue can be made. The committee in recent years has employed clerks and statisticians. Contrary to the custom in nearly all other states, this committee reports these

bills one by one, to the legislature, thus holding control of the situation until the estimate of their amount and the revenue which may be expected is secured. No other attempt at a budget is made.

The state board of public affairs created by chapter 586, laws of 1911, is now outlining a plan whereby estimates may be made before the beginning of the session, by which greater accuracy and certainty can be secured during the legislature.

In the opinion of the writer, Wisconsin has been fortunate on the whole, in not having what is known as a "budget bill." Trained as a student of economics, it was rather difficult for him to reach this conclusion but a thorough investigation of the procedure in other states and some first hand knowledge of such procedure in foreign countries have convinced him of the wisdom of this plan. The budget bill is considered unwise because it includes so much that is a fruitful source for log-rolling and in nearly all states has to be supplemented by other and more dangerous machinery, such as the power of the governor to veto items in order to do away with riders, the deficiency bill to make up for inevitable mistakes and discrepancies and other similar devices. So much is involved in a budget bill that the members cannot consider the items separately as they should and are inclined to either cut it arbitrarily or accept it as a whole. In Wisconsin each bill must be considered on its

merits, fought over and either killed or passed. Nothing could be more desirable if at each stage, the members have before them a statement of the actual finances of the state. The budget bill — meaning one inclusive bill containing all appropriations — belongs in a responsible cabinet government and not in a government such as ours. A cabinet government may present its estimates and recommended expenditures and permit the legislative body to fight over them within limits but the administration as a result of its acceptance or rejection, stands or falls, consequently the party member is whipped into line and supports those who make the estimate, unless the protest from public opinion is so great that he dare not do so. If he does not stand by those estimates his party goes out of power and a new administration comes in to make a more acceptable and popular budget. That American states have adopted the budget bill stands as a monument to the stupidity of political economists who have recommended it to American legislatures in the past.

Wisconsin fortunately never has adopted another plan which has usually accompanied the budget idea as furthered by political economists and accountants and which has no precedent on the face of the earth — that is, the idea that appropriations should be made for all state departments merely for a two year period. The inefficiency, corruption and log-rolling which have come

in many states from this entirely false idea have been excluded from this state in spite of constant pressure to introduce it. Such a plan means minority control of all institutions and departments; it means that every institution or department dies every two years, for unless the appropriation is forthcoming the institution or department must go out of existence; it means that twenty members of a senate — if twenty is a quorum — may say to the entire legislature, "It takes an affirmative action to pass this money and we can block it. If the institution or department wants this money it will have to accept our terms." That is, the minority dictates the terms. This little joker has not been realized by our wise economists and accountants who have been called upon to help legislatures to better their financial procedure but it has destroyed the spirit of institutions, it has debauched commissions and departments and resulted in stagnation in many states. In some states where things are peacefully sleeping, we hear nothing of its influence; but let an institution or commission become really active and note what will happen. The writer has evidence in his possession from many states of its power. He does not wish to be understood as opposing the budget system. On the contrary, he firmly believes that all appropriations together with careful revenue estimates should be laid before the legislature every two years so that an account of the stewardship

of commissions and institutions may be made to a cent, but there should be a number — an ever-increasing number — of institutions on a permanent basis so that the legislature by a *majority vote* may at any time, raise or lower the appropriation as it sees fit — but not by a *minority* vote. The matter is important and worthy of serious consideration because no state will get sound results unless it provides some permanency for judicial bodies, semi-judicial commissions, such as civil service, railroad commissions, etc., and above all, educational institutions.

In England especially and in foreign countries in general, although the budget may be considered at stated intervals, many of the most important items are placed on a permanent basis. Even under cabinet government in foreign countries which may be changed by public sentiment, there exists no such budget idea as in the American states. Indeed, those countries provide means whereby, if the budget does not pass *at all*, the departments and institutions still continue. How can the experts in our commissions and the thinkers in our institutions ever be aggressive and wide awake if they always have to be on the defence against a *minority?* There is no more unwise arrangement conceivable than this plan of having our appropriations completely end every two years.

Another advantage which has fortunately helped this state is the simplicity of its old constitution. For in-

stance, in many states it is almost impossible to pass legislation which will withstand the scrutiny of the courts, because of the technical legislative limitations. Many of these are exceedingly trivial, such as defining what should be in the title of a bill. Wisconsin is fortunate to escape some of these unimportant limitations, although one very perplexing difficulty is constantly arising. In this state there is but one city of the first class — Milwaukee. The constitution forbids special legislation so that all its legislation must be made general for cities of the first class. It is practically impossible to draft a law for that city which will certainly stand the test of constitutionality under the complex limitations and the numerous court decisions involved.

Many constitutions provide limitations as to the length of the legislative session; Wisconsin has no such limitation. In spite of cheap clamor concerning the time spent by the legislature in session, this has been a great blessing to the state. With hundreds of laws to be provided any one of which may be tested before the courts for years, it would indeed be foolish to fail to give reasonable time or intelligent care to these bills. It is a good investment in the end. The writer believes it would be a good thing for the legislature to meet immediately after election, organize committees and adjourn for a year; it would certainly assure more care in the preparation of measures.

The Wisconsin legislature meets biennially. The amount of work involved has been so great that the writer believes it will not be long until some kind of annual session will be necessary if hasty legislation is to be avoided. In those states which have sessions limited to sixty or ninety days by their constitutions, there is an excellent opportunity for "jockeying" and great inducements for delay, as all bills not previously disposed of must either be passed or killed in the last few hours. Nothing more disastrous to good legislation can well be imagined and the session laws of those states bear out this statement.

The study of legislative machinery has been of special interest to the author because of his duties as chief of the Wisconsin legislative reference department. Because of many questions from various parts of the country, the following description of the department and its purposes is included. Much of the following has been digested from previous statements but there are occasional digressions to show the actual conditions of legislation and the need of a department of this kind.

We are all aware of the stupendous changes in our economic and industrial conditions which this country has undergone since the constitution was adopted. To meet these conditions our whole theory of government has been strained.

Diagram V may illustrate the problem of modern legislation. Let us assume that this illustrates approximately the conditions when the constitution was first adopted. It will be presumed that the constitutional convention made legislative power and the constitution conform approximately to the actual industrial and social needs of society. This is a reasonable supposition. If true, what has since occurred?

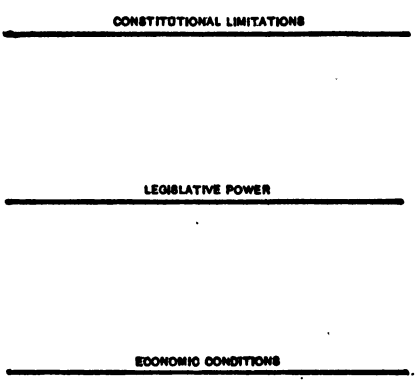

DIAGRAM V

Diagram VI illustrates the present relative position of the constitution, the legislative power and economic conditions.

The constitutional power has been increased by the action of the courts and especially by the new force which has grown up, probably not contemplated by the original constitution, namely, the power of the courts to pass upon the constitutionality of laws. The constitution in fact, has grown from a small pamphlet into thousands of cases and hundreds of volumes of decisions. These decisions cannot but lessen the power of legislatures. It is true that the "constitution cannot be read in a law library" and the increase of the domain of the

police power and of administrative law has somewhat broadened the power of the legislature in certain directions but on the other hand the very mass of interpretation is itself a restriction.

Every word, almost, has received an interpretation or has had its meaning confused by endless decisions. Judge Hornblower in an address in which he decried the

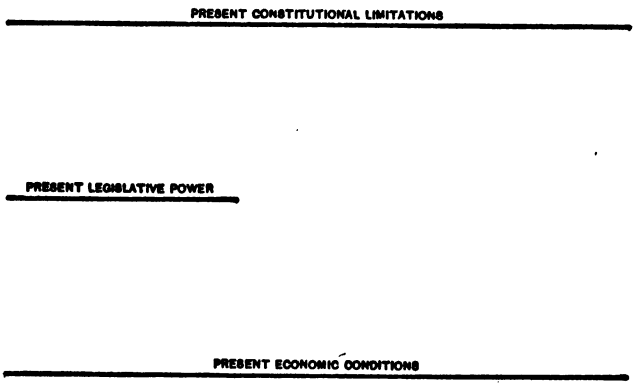

DIAGRAM VI

increase of statute law and defended judge-made law, gives us one of the strongest pictures of the difficulties of law making. He says:—

"Experience shows that when rules of law are reduced to statutory form the work of interpretation and construction commences. Each word in the statute assumes importance and calls for enforcement. A 'but' or an 'and' becomes as important as the subject or the predicate of the sentence, and sometimes even more important. . . . In a statute conciseness, exactness, and pre-

cision are sought after, and each article or preposition is as much the will of the legislature and as binding upon the courts as are the nouns and verbs.

"Human language is at best defective and ambiguous. Theologians dispute over the meaning of texts of Scripture, and when they have formulated creeds and confessions as setting forth the doctrines of the Scriptures, the dispute begins again over the meaning of the creeds and the confessions. So with statutory law. No matter how clear and simple the language may appear at first sight, doubts will arise, ambiguities will be disclosed, inconsistencies between different sections will present themselves, and a series of never-ending decisions will be inaugurated, construing and interpreting the statute, till each section becomes overlaid with a body of judge-made commentaries forming a new set of precedents and a new jurisprudence. No greater fallacy is indulged in by the advocates of codification than that it will diminish litigation. Statutes breed litigation. Experience demonstrates this. Whatever other merits codifications may have, the diminution of litigation is certainly not one of them. Look at our New York Code of Civil Procedure (our code of practice) with the three bulky volumes of Bliss's Annotations of Decisions construing it, each volume nearly as large as a Webster's Dictionary. Look at the little Statute of Frauds, composed of a few sections with its wilderness of authorities interpreting it. Look at the portion of our New York Revised Statutes on Trusts and Powers, and count the cases in each volume of our Court of Appeals Report construing these few sections. The idea that codification is a remedy for uncertainty in the law and that when the law has been written in statutory form, the layman will be able to read and understand it, is a delusion and a snare."

Professor Howard L. Smith is the authority for the following statement:—

"There are in America alone over six thousand volumes of decisions of fifty or sixty different tribunals, and these are being added to at the rate of from one to two hundred volumes per annum. The common law is being further developed, illustrated, and made by the courts of Great Britain and all her widespread colonies. The number of volumes of precedents that these add every year to the common law, I have not attempted to compute, but it is certainly appalling. The shelves of our libraries groan under them, and the lawyers are being driven out of their offices by their books.

"An advertisement of a recent encyclopedia of law boasts that it has 8559 citations on the subject of adverse possession, while its leading competitor has only a paltry 4999. On the subject of abatement and revival it has 5015 and on appeal and error 47,000. Amid this bog of precedents the lawyer of to-day must stumble, groping earnestly, but often vainly, for a clue which shall lead him to the truth. It is probable that the number of citations on the one subject of appeal and error in this encyclopædia is greater than the real number of precedents on all legal subjects in existence a century ago; but the mad race of precedents is only begun, and will of course increase in the future in an ascending ratio, until in the near future they will be counted by the tens and the hundreds of thousands or millions.

"That the lawyer desiring to advise his client as to some simple, readily foreseeable question of law should be obliged to consult hundreds of volumes, and thousands of precedents, perhaps only at the end to find that there is a hopeless division of authority, and that he knew just as much about it in the beginning as at the

end, is certainly a situation so serious as to demand some remedy, if any be possible."

If the lawyer has to meet these conditions what can the layman do? If these conditions are encountered in the interpretation of law, the making of the law is indeed a terrible task. We have an endless circle. We cannot make statute law without consulting this labyrinth; nevertheless we *must* make it. We *must* make it even though we only follow public sentiment.

Our government was founded on the principle that the adaptation of law to economic conditions should be made by the will of the people expressed in legislation. We cannot give this task to the judges; we did not make our government on that basis. Divided courts and reversals have left the lawyer helpless as well as the layman of the legislature. The courts have often indulged in reckless use of the power to declare laws unconstitutional on the slightest technicalities. The fourteenth amendment to the federal constitution has been very efficacious in restricting state legislation, as has also the broad interpretation of federal statutes by the federal courts. On the other hand the simple industrial conditions of fifty or a hundred years ago have given place to the present era of wonderful inventions. Nearly every invention and device, economic, commercial and mechanical used in our modern life, has to be met by legislative restriction or control.

Under these conditions it is remarkable what progress has been made with our statute law. In spite of all criticism and faults when one looks over our statute law he is amazed that it is so good. When he considers that it was made under the conditions herein described; when he considers that state after state came into the Union, each making an entirely new constitution, each adopting an entirely new body of laws, he cannot but feel proud of the inherent ability of the American people. The argument is unanswerable. In general legislators have not been corrupt nor have they been inefficient. Our statute volumes are monuments to the ability and common sense of our legislators. No other people under the same conditions could have done so well.

Representative government must be judged in the end by its product and the immediate tangible product of representative government is the statute. If we are to construct a building to-day and the structure is to be a large one or of any real importance, there must be an architect. If it were built without his services it is probable that the building inspector would order it demolished in order to protect life, health and property. We must have experts to show us practical plans and to arrange for heating, lighting and sanitation. If we do not, disaster is the result. In building the statute which regulates everything in life, is it not the sensible thing to employ an architect and let him work out the plans

under our general direction and ask him to change them again and again until we are satisfied? Is this not the right thing to do in order that the plans may be passed upon by the building inspector and that the building may rise fair, noble, fitted for our use and so constructed that it may stand for all time?

The courts have acted for a long time as building inspectors. They have been forced to destroy too many structures which were not properly built in the first place. There should be a body of experts to gather information about the laws, to obtain statistics, to draft and redraft through the guidance of the representative of the people, laws which deeply affect the people. There should be some such system whereby the products of democracy may be good and the courts may not be compelled to leave the sphere which the fathers intended they should occupy and go into the untried fields of judicial legislation.

This is the central main concept of the legislative reference department. The legislative reference department of the Wisconsin library commission was established in a small way in 1901. It became apparent at once that the demands of this library were of a peculiar nature which could not be readily met by the ordinary library material or methods.

A plan was devised which has been since carried out as far as the resources given by the legislature would

permit. It was found that there was no coöperation between the different states of this Union in the matter of collecting the history of legislation; the history of what had occurred in Europe or in some state of the Union upon a certain subject of interest to the people of the state was not readily available. An effort to supply this demand was made by collecting such indexes of up-to-date legislation as were published, bills from other states, documents explanatory of legislative movements in other states and arranging these by subjects so that they would be at the service of all who desired to see them. It was found that even this material did not solve the problem; it was necessary to clip newspapers from all over the country and to put the clippings in book form, to index them carefully and place them also with the subjects. Our own bills of the previous four sessions were carefully indexed and by noting the subjects of those bills, we anticipated the problems with which the legislature would have to deal. These problems or special subjects were carefully studied in the most minute detail. It was comparatively easy to get laws and court cases but it was far more difficult to find how these laws were administered, to discover the weaknesses in them and to note as far as possible how they could be adapted to our use in this state.

Our short experience has taught us many things. We have been convinced that there is a great opportunity

to better legislation through work of this kind — that the best way is to help directly the man who makes the laws. Everything which will help him to grasp and understand the great economic problems of the day in their fullest significance, the legislative remedies which can be applied and the legislative limitations which exist is brought to his attention. The legislator is a busy man; he has no time to read. His work is new to him; he is beset with routine; he is obliged to hold conferences with his friends upon political matters; he is besieged by office-seekers and lobbyists and he has no time for study. If he does not investigate for himself, he often is deceived by those who are seeking the accomplishment of their own selfish ends. Therefore, we can be of the greatest service to him, if we index, digest and make as clear as possible all kinds of information.

A large library is likely to fail in this because it is of too general a nature and too cumbersome. Everything in such a department should be directly to the point. It should be a depository for all sorts of documents relating to any phase of legislation from all the states, the federal government and particularly from foreign countries like England, Australia, France, Germany and Canada. Here one would be able to obtain a law upon any subject or a case upon any law very quickly. Therefore, it is very convenient to have this room near a good law library. Books are generally behind the times, so

that newspaper clippings from all over the country, magazine articles, court briefs and letters must supplement this library and compose to a very large extent its material.

A trained librarian and indexer, a resourceful person with a liberal education, who is tactful and can meet an emergency is absolutely essential. The material is largely "scrappy" and difficult to classify and should be so arranged that it is compact and accessible. In our work we are not afraid to tear up books, documents, pamphlets, clippings, letters, manuscripts or other material, put it with the different subjects and minutely index it. Legislators have no time to read large books. The librarian has no time to hunt up many references in different parts of the library; all material upon every subject of legislative importance should be together as far as possible. Complete indexes of all bills which have not become laws in the past should be made. This saves the drawing of new bills and makes the experience of the past cumulative. Records of vetoes, special messages, political platforms, political literature and other handy matter is carefully noted and arranged.

Digests of laws of the various states on every subject of importance receiving consideration by the legislature should be made and many copies kept for distribution. Leading cases on all these laws, opinions of public men and experts upon the working of these laws or upon the

defects, technical or otherwise, are carefully indexed. As far as possible in the Wisconsin department the more important subjects with short bibliographies are published in pamphlet form.

Such a department must be absolutely non-political and non-partisan. If there is a choice between the establishment of a political department or no department at all, the latter alternative should be taken without question.

The head of such a department should be trained in economics, political science and social science in general; he should have a good knowledge of constitutional law but above all, should be possessed of tact and a knowledge of human nature.

There should be a trained draftsman connected with the department — a man who is a good lawyer and something more than a lawyer — one who has studied legislative forms, who can draw a bill, revise a statute and amend a bill. It is essential that help such as a man of this type can render, be given to the legislator when he desires it.

Will such a department help in the betterment of legislation?

Let us consider for a moment how a law is actually made. John Smith comes to the legislature. He is a good citizen, a man of hard sense and well respected in his community. Suddenly, from the quiet of his native

village, he enters into a new life in a new community. He is worried by office-seekers; his old friends and advisers are not near to help him; he finds that it is necessary to learn the ropes; that if he is to represent his district, he must introduce bills and in some way must push those bills through the legislature. In the first place he must have those bills drafted and since he never drew up a bill in his life, knowing very little of legal technique, he is greatly perplexed. He is confronted with two thousand bills on almost as many legal and economic subjects. Complex questions, which have not been settled by the greatest thinkers of to-day are hurled at his head. Even scientific subjects that the chemist, the physician or the man of science find difficult must be met by our John Smith while in the hurry and rush of committee work. If he is honest, he will either attempt to draft the bill himself or pay some lawyer to do it for him; the easiest way however, is to consult some one else. He finds around him bright men, well paid lawyers, men of legal standing who are willing to help him in every way. It is easy to consult these men; and often if he does, he is lost. He seldom finds a true friend. They are there for their own interests and John Smith is legitimate prey. It is their business to reach him. If by persistent courage and sterling honesty he pushes his bills to passage, those laws dealing with complex, technical subjects and drawn by a man

unskilled in law, are often declared unconstitutional by the courts.

Here then, is the situation. We see the farmer, the groceryman, the country lawyer, the successful manufacturer, the man of business, all grappling entirely unprepared, with the problem of making laws that represent every phase of industrial life. A few years ago the simple legislation could be easily handled by these men but now the great problems of the railroads, the telegraph, the telephone, insurance, and the many complex things of our modern life, make it simply impossible for one man however bright or educated he may be, to act intelligently upon one-tenth of the subjects which come before the legislature. When some new invention comes into being, legislation must deal with it; when some new situation arises through the growth of new industries, some new law must be made restraining, encouraging or in some way regulating these new conditions. It all goes to show how unfitted is our old representative government to meet the conditions to-day and how utterly helpless any one man is to meet these intricate problems.

Besides all these difficulties, there are others previously mentioned, one of which is worthy of special attention, namely the great abundance and complexity of judge-made laws. The increasing distrust of the legislatures by our citizens has resulted in state constitutions

which are nothing more than compiled statutes, filled with innumerable restrictions upon the action of the legislator. He is restrained in every way by the federal constitution, by his own state constitution and by the hundreds and hundreds of cases interpreting nearly every word and phrase in every law. Is it any wonder that there is a cry that the supreme court is usurping legislative functions and is defeating the will of the people? Does it seem right that our legislative opinion should be moulded by private interests because they alone know how to present their case? Does it seem right that the only help which the legislator receives in his great need is that of the people who are seeking gain from the very laws he is making and who are trying to prevent the making of effective laws?

A committee is often a judicial body. It sits in judgment upon private bills. It gives rights and franchises that make men wealthy or deprive men of their property. Yet this court hears often but one side of an argument and has no means of investigating the truth or untruth of a single statement made. Not only that but it is subjected in its determination to a hundred influences to which no judge is subjected. Would we permit such a state of affairs in our private business? Would we tolerate it in our judiciary? Why, the powerful interests do not have to resort to bribery! Their experts can win by the irresistible force of argument

alone. They must hold the balance, for they have the brains of the land and pay well for them.

Is it any wonder that many good people throw up their hands with joy and say "Thank God the legislature is over"? Is it a thing to be joked about? Our papers make fun of the legislature and its "freak" legislation but it is a most significant state of affairs when a people lose confidence in its governing body.

The revelations of graft and corruption of the last few years should convince us all that we must seek a positive remedy of a more fundamental kind than has yet been proposed. If these are the conditions under which our legislative opinion is formed, is it strange that the will of the people is constantly defeated? Is it any wonder that our laws are poor? Is it any wonder that the clamor of public opinion is not heard within our legislative halls, and that the making of needed laws goes on so slowly? What is the remedy for all this? We look about us and on the whole find our judiciary composed of able men. Our administrative bodies have not yet reached so high a standard but we are every day developing administrative bodies which are becoming more and more fit to take charge of the business of the state but how about the legislature? Does it not seem reasonable that the law which is the expression of the will of the people and upon which good administration is founded, should be scientific — should be based

upon the best experience of mankind? If our administration is to be good administration, does it not seem ridiculous that the supreme courts — the highest legal talent in our states and our nation — should go on day after day, year after year turning out decision after decision upon laws which are often made by men who have never seen a law book, and who have not had the slightest legal help extended to them? Does it seem right that our fundamental law should be left to these haphazard conditions? Does it seem reasonable that all the talent should be used in interpreting laws, in curing their defects and that absolutely nothing should be done in a scientific way to assist the man who makes them? The construction of the law is a far harder task than the criticism or even the interpretation of it. It involves the interpretation of it; it involves a knowledge of the theory of government and because of the enlarged sphere of government to-day, a sound knowledge of economic conditions. Our legislators can furnish the brains and the will; all that they need is the technical assistance.

We have heard a great deal of condemnation of the legislature. It is easy and popular too, to sneer, censure and criticise — but we have heard very few suggestions as to a remedy.

If private forces maintain bureaus of information for representatives, let us have public information bureaus

open to private and public interests alike. If it is difficult to get information because of the great variety of subjects now coming before our legislators, the only sensible thing to do is to have experts gather this material. If business interests have excellent lawyers to look after their legislation, the people should secure the same kind of men to help their representatives. If the business interests secure statisticians, engineers and scientific men, the public should do likewise. If great judges and lawyers are constantly working upon the problems of interpretation of laws, surely men of equal ability could well be consulted or retained by the people's representatives in the construction of these laws.

Now, what do we expect from the successful operation of a system like this? We hope that all legislation may be made better and be placed upon a more scientific basis. We look upon this as a purely business operation. No one would buy land in Texas without having seen the land. You might buy land in a lake or in the bed of a river if you followed such a plan; you would at least have some one look up your abstract. But we permit our legislators to copy a Texas statute which may be twenty years old, may have been modified twenty-five times, may be entirely unsuited to our conditions and which may be in the end unconstitutional — we let our legislators incorporate such statutes in our statute books without a protest. Common sense tells us

that we should secure all possible knowledge relating to that statute for the use of our legislators. In this way legislation cannot avoid being improved; in this way the dearly bought experience of one state is used for the betterment of conditions in another state; the best there is may be culled out from the statutes throughout the country and used for the benefit of our people.

There is a great outcry against our overloaded constitutions. Our constitutions have been purposely overloaded because the people who made them wished to incorporate certain things which could not be overturned by the caprice or corruption of legislators. As time goes on, if the people find that the product of legislation is based upon a careful scientific study, they will regain confidence in the legislature and again trust it.

There is a widespread agitation at the present time for centralization and nationalization, a movement which strives to have one after another of the state functions absorbed by the national government. There is much discussion concerning various forms of federal supervision of one thing or another. As our state laws are gradually improved, a great deal of this agitation will cease, for as yet we have not reached the limit of efficient state activity, nor made a scientific study of expedients. The best laws are those which are of most interest to the men who make the laws, and the only means of saving our local option system of state government, the only

means of keeping the federal government at Washington from controlling our affairs, is to make our state laws better and better. The only way in which they can be improved is to use scientific methods in the making of them. Every improved business method together with technical, clerical help should be secured in order that the man who passes the laws may have at his command the knowledge necessary to make laws good, just and worthy to stand for all time.

If our state legislature gains in the confidence of the people, in like proportion will our supreme court and judicial bodies profit. Our courts will not feel called upon to make decisions which apparently defeat the will of the people. They will not be obliged to overthrow law after law which has been put upon our statute books by prolonged and patient struggle. Prevention is better than cure, and every effort which can be put into prevention in this case will make it easier for our courts to decide upon the true merits of the laws. Decisions based upon technicalities will be less in number and our judiciary will continue to be respected and honored.

Says the Montana bar association in a recent report: "The time of the court is consumed in hearing discussions upon statutory enactments and determining what law is in force and what has been repealed. Litigation is thus delayed, additional expense engendered and the private rights rendered insecure." What is the remedy

for such conditions? Do these conditions not demand that the same skill used in interpreting the law shall be used in its construction?

Quite recently we have seen the results of the work of the Armstrong investigating committee in New York. No insurance law ever passed in this country had so much effect upon insurance regulation and that report was made by legislators, not by state officials. There have been objections to the increase of commission government and yet this form of government has increased because it has been felt that it furnished the only method of enforcing laws and the only way of administering special duties. And yet this Armstrong committee shows us a way of making laws and of compelling their enforcement better than boards and commissions. If we have some department working with our legislature and have that department between the sessions serve the investigating committees, we can be sure that there is always a check upon the action of our boards and commissions and that there is always at hand a remedy for evil in the hands of the people themselves. They can always ask for an investigating committee for any commission and the report of that committee will probably result in a good, sound law. In England to-day there is a movement to establish a "Permanent staff" for investigating committees intended to accomplish this very purpose.

At the present time in nearly all of our states, an able lawyer may go before a committee composed of good farmers and merchants and though he may not speak the truth, he will sometimes have that committee absolutely at his mercy. He can tell them privately or in committee that a certain bill is unconstitutional or has been a failure where tried and defy individual members to answer him; he has behind him many clerks to gather statistics of all sorts for his use before that committee. What can the individual member of that committee or the committee itself do under those circumstances? Of course, the committee man does not care to make himself ridiculous and so he states the business in a half-hearted report or acquiesces in the statements of the attorney before the committee. If an entirely non-partisan and non-political department existed, composed of men of ability, there is no reason why that committee could not require briefs to be filed by these attorneys for private interests and invoke the aid of this department. In this case it would be more difficult to deceive by misstatements and the committee member could investigate for himself if he were honest and wanted to do his duty.

As to our department in Wisconsin, we are not trying to influence our legislators in any way, we are not upon one side or another of any question nor are we for or against anybody or anything; we are merely a business

branch of the government. We are not dictating legislation but are merely servants of the able and honest legislators of our state, clerks to gather and index and put together the information that these busy men desire; it is a business proposition. Question after question asked of us by the legislature is investigated in as scientific a manner as time and means permit. The legislator sometimes does not know where he gets the information; the professor of economics, of political science, the public men, the chemist or scholar does not know where it goes. The great body of public men throughout the country can be drawn upon for information to help our legislators. Committees too, realize the worth of this research work and a large number of the bills before them are investigated by this department. Committees working upon abstract and technical subjects have at their command in concise form, letters, opinions and other data from experts all over the country upon the particular subjects in hand. We may not have accomplished much but at least we have done something where nothing was done formerly. The department now has four expert draftsmen during the session at the service of the legislature and about twenty-five librarians, clerks, research workers, etc.

Has there been criticism? Yes, but it is chiefly confined to this one point; it makes it too easy for a man to draft a bill! Is it a just criticism to say that the

carpenter has tools which are too good? What is really meant is that too many bills are drafted. There are too many bills drafted but there are no more in proportion, considering the great agitation going on in this state than in other states. Indeed they are far less than in the old days when annual sessions were held for the purpose of giving away franchises and passing hundreds of private and local laws. Regulative bills and those of a general nature have increased recently in congress and in every state legislature in this country as well as in foreign countries. It means that democracy now is alert and is trying to demolish the old statutes and install new ones.

It is a good condition for the country — a nation is safer than when too much complacency exists. The deadened or uncivilized nations are the only ones which do not require change in laws.

As Walter Bagehot says: "There is a diffused desire in civilized communities for an adjusting legislation; for a legislation which should adapt the inherited laws to the new wants of a world which now changes every day. It has ceased to be necessary to maintain bad laws, because it is necessary to have some laws. Civilization is robust enough to bear the incision of legal improvements." England is a good example of the new activity in legislation.

Any flood of legislation may easily be stopped by the

legislators if they determine to consider only the essential and to disregard the remainder. Year after year, the author has offered three suggestions which have been as regularly dismissed. The first of these proposed remedies is the establishment of a legislative rule compelling a member to obtain permission by an aye and no vote of the legislature before introducing a bill. All members would then go on record as to whether they wanted to consider the subject of the bill or not. Of course, the party in power would practically make the selection and be responsible for the introduction of the principal platform bills. But the member who comes to an American legislature wants his constituency to realize that he is doing something and the introduction of bills is a sure sign of activity on his part. Custom is so ingrained that it cannot be changed in a day. There are many men who do not care to father half the bills they present but the fellow at home is a good friend and therefore they must be introduced. If such a rule existed how easy it would be to explain to his friend that under the aye and no vote the bill was refused consideration. It is merely a matter of self-control which the legislature refuses to exercise.

The second suggestion was that much of the private and local legislation could be abolished or submitted to some procedure like that of the English private bill procedure. In Wisconsin about six hundred bills could be

disposed of by this device combined with a proper home rule bill. To-day, in the advanced state of Wisconsin there is a fish commission which scientifically selects plans for the propagation of fish. Every session the legislature has to consider about one hundred and fifty or more fish bills relating to every creek and pond in the state. It does seem that if the commission is permitted to put fish into a lake, it could be trusted to determine rules as to the desirability of taking them out.

The third recommendation was that no bill be drafted in the legislative reference department unless the prospectus submitted be signed by ten or fifteen members. This protection has not yet been granted. If the department had this or some similar defence, it could devote the time of its lawyers to the more important bills. However, most of the bills before the legislature are drafted by attorneys throughout the state and sent to the members in all kinds of forms. The members then submit the bills for revision, so that they may follow the legislative rules. In this way over 90 per cent of the bills before the Wisconsin legislature in some way come in touch with this department.

The relation of this work to a deeper study of statute law and the principles underlying it will be the next consideration.

CHAPTER IX

The Law and Economic Progress

The growing impatience with our courts in America is very evident. The relation of the principles discussed in this book to court procedure needs some further explanation. Thus far the legislature and the administration of the laws have been the subjects of comment and it is with great pleasure that some consideration is now given the Wisconsin courts. But before so doing, a moment's pause to reflect on the whole question of judge-made law, economics and statute making may not be out of place.

We have been so thoroughly disciplined in America to the infallibility of a written constitution as interpreted by the courts, that only recently have we had impressed upon us instance after instance which disclose the hiatus between economic conditions and court decisions, culminating in the decision of the New York court of appeals in the workmen's compensation case. Can it be possible that a court would practically recognize the humanity, justice, right and necessity of a law prepared with the greatest care by the legislature and at the same time declare it unconstitutional? Can it

be possible that there are standards of right and justice which public opinion recognizes and which violate a constitution, the very bulwarks of justice and right made especially to preserve these very things? Such a situation seems to the layman absurd and nonsensical. Yet has not this hiatus existed for many years and become ingrained into our very system? A thousand cases show that it has. Is not the necessity for devices such as the railroad and industrial commissions, evidence enough that a jurisprudence different from that which we have been teaching in our law schools must be developed? Is it not necessary to teach those who are to become our judges an economic viewpoint in addition to the stiff doctrine of precedent? What, after all, are the advantages of the rulings of commissions? Simply that those rulings are based upon economic facts and not upon precedent. By instituting commissions we have established code law as understood in the old countries and at the same time have laid the foundations for what Roscoe Pound of the Harvard law school calls "Sociological jurisprudence." Are not the rulings, based as they are upon the police power, evidence enough of the fact that the old procedure of our courts, the old doctrine of precedent, is giving way to the newer doctrine of paramount necessity?

The judges are not entirely in fault: a portion of the blame lies elsewhere. Old forms give way but slowly

to new growths. The astounding rapidity of the progress of modern industrial and commercial machinery has left many a good, just and able judge perplexed and bewildered, with his flag nailed to the mast. Can we expect more from the judges than we do from the equally bewildered economist or legislator?

Particularly have questions relating to the control of great monopolies proved too complex for the courts. However good a court may be, it is a court and not an administrative body. The discontent with the rulings of the commerce court demonstrates the truth of this statement. The attempt by the supreme court to establish some kind of administrative machinery to carry out its rulings in the tobacco case is another case in point. Such matters are not within the province of the court and they have no machinery to handle economic cases of any complexity or magnitude. A recent editorial in the *Saturday Evening Post*, commenting upon the commerce court, makes the following pertinent statement:—

"Suppose you were building a dam and had employed a competent civil engineer; but your lawyer insisted that all the engineer's orders must be subject to review by him. In the course of some years, if the engineer were sufficiently patient in explaining the import of his various orders the lawyer would understand all the problems involved in the construction of the dam; in short, he would become nearly as expert as the engineer himself.

"However, while the lawyer was acquiring this expert knowledge you wouldn't be apt to make much progress with the dam.

"That is about the situation created by the new commerce court. The Interstate Commerce Commission, by years of investigation, has become familiar with the problems of transportation. The commerce court act simply makes this expert body subject to a body that does not know so much about transportation. That the general effect of the court will be to paralyze the Commission — at least, until such time as the court itself becomes expert in transportation — seems most likely."

A new procedure has been needed, but that does not excuse the courts from making every effort to meet the matter halfway by dispensing with a large part of the useless load of precedent and dilatory and costly practices adverse to the poor man. They can be blamed for that needless conservation and justly so. They must take even a broader notice of sociological factors or they will be discredited. A great deal of injustice is done before public conscience is sufficiently aroused to check by means of necessary statutes those evils which are constantly arising. But how shall we find a remedy for the rapidly accumulating evils of to-day, when the courts are still further hampered by precedent which is recognized by every one to be as dead as Adam?

Even statute law lags far behind public opinion, but as Judge Dicey says in his book "Law and Opinion," —

"If a statute . . . is apt to reproduce the public opinion not so much of to-day as of yesterday, judge-made law occasionally represents the opinion of the day before yesterday."

The story of history is repeated time and time again, as Professor E. A. Ross points out in his "Social Psychology": —

"Law stiffens with the accumulation of precedent, or the growing prestige of dead commentators, — a Gaius or an Ulpian, a Coke or a Blackstone. Says Amos: 'So soon as a system of law becomes reduced to completeness of outward form, it has a natural tendency to crystallize into a rigidity unsuited to the free applications which the actual circumstances of human life demand. The invariable reaction against this stage is manifested in a progressive extension, modification, or complete suspension of the strict legal rule into which the once merely equitable principle has been gradually contracted.' Equity itself, at first an attempt to correct the mechanical operation of law by enlarging the sphere of judicial discretion at the expense of technicality, gets bound by precedents, acquires a legal shell, and becomes merely a competing system of law destined in the end to complete absorption.

"Litigation gets so involved in elaborate procedure that no one dares trust himself to it without the guidance of an expert. A lawsuit, originally a quest for truth and justice, becomes a regulated contest between professionals, to be decided according to the rules of the sport. 'The inquiry is not, What do substantive law and justice require? Instead the inquiry is, Have the rules of the game been carried out strictly? If any material infraction is discovered, just as the football rules put back the offending team five or ten yards, as the case may be, our sporting theory of justice awards new trials, or reverses judgments, or sustains demurrers in the interest of regular play.'"

Indeed, precedent has become so sacred and so confused with the principles the fathers laid down in the

grandest charter of human rights the world has ever seen, that if one attacks a foolish decision, up pops little Mr. Pettifogger and angrily accuses him of trying to undermine the very foundation of government — the constitution itself.

Many of our law schools have become mere trade schools, and their graduates, instead of being men well founded in the fundamental principles of law, turn out to be attorneys who know all the tricks of the technicalities, but are sadly deficient in a knowledge of the economic conditions, surrounding law.

How can we hope for anything else than a turning to commissions for help, right and justice with such a growing impatience of the justice administered by these tradesmen? The law schools, lacking as they do real appreciation of history and sympathy with democracy, have become, in many instances, seats of Bourbonism. If we are to believe with these men that the only law is the judge-made law, everything is in a static condition and the efforts of the legislature to change conditions are foolish and needless.

The fact is that away down in their hearts a goodly number of lawyers taught in our modern schools really do not believe in representative government at all. That for which our forefathers fought is to them a thing merely to be tolerated. Mr. Charles Bonaparte may not be considered the most conservative lawyer of his

class in America, and yet in an article in the *Green Bag*, October 1911, on the "Judges as Law Makers" he says:

"Our statutes are in great part the work of mere vote-hunters and demagogues, enacted for the temporary ends of politicians or artfully contrived to advance the selfish purposes of unscrupulous men, often the very men against whose wrong-doing they pretend to provide safeguards. At best, they are seldom more than rudimentary, embryonic laws, destined and intended to be moulded into their final and practical shapes by the legislative action of the courts in professedly construing but really completing them."

"Our judges are far more capable than are our legislators to give expression and effect to the people's will; they are also more competent and more faithful interpreters of what is the people's will, because far less liable to be misled as to this by mere outcry from the press or the tawdry gabble of agitators; for, ever since the days of the Three Tailors of Tooley Street, the query: 'What is' or 'Who are the people?' has been matter of debate and often of dispute; and, although it has received, for practical purposes, many different answers in different countries and at different times, the legal 'people,' that is to say, that part of the community empowered by law to speak and act for the whole, has been always and everywhere a minority of all the human beings subject to the 'people's' will."

If this is true, why all this bother about representative government? Why not do away with it at once or turn it all over to the courts?

Perhaps the courts are not all wise; perhaps the fathers who made the constitution were wiser than they may seem to the learned product of our so-called

law schools. It may be that with a few scientific tools in the hands of our legislators, we may find a way out of the difficulty. It may be that we can build up a code of law which may be taught in real law schools, so that they will produce men who will go to the bench believing in some other maxim than "What is, is."

The ridiculous assumption of fatherhood and protectorship which some American judges, in their pomposity, have attained, makes itself felt not only in the courts but in the attitude of practically every lawyer who comes to the legislative halls. It has been the means of retarding the march of progress in legislation and of establishing into the body of our government certain fallacies which have been a real and potential danger to the whole fabric of the state.

Take for example the power of the attorney-general in many states. This official in our state is elected in the same manner as other state officials. Suppose that he is opposed to some law and wishes to remove it from the statute books. The only step necessary is to have the law submitted to him for an opinion and he can declare it unconstitutional.

The supreme court itself has more limitations, in that it must at least have a case presented before it can hold hearings or render a decision. The attorney-general alone has the remarkable power of despatching a law put upon the statute books by the will of the people or

so modifying it that it is rendered useless and practically void.

But this is not all. Let us suppose the state auditor thinks a certain great commission unconstitutional and refuses its payments while awaiting a decision from the attorney-general. If the attorney-general declares that it is unconstitutional he can then appear for the constitution as protecting the state treasury against the commission itself — the embodiment of a law established by the will of the people and passed by its representatives. Here then is the situation — the state is paying its attorney for appearing against it to destroy a law which it has decreed shall exist! How absurd! And yet this actually occurred in the recent Wisconsin civil service law case, which law was happily sustained by the supreme court. Both the auditor and the attorney-general were doubtless honest in their beliefs and should not bear the blame, but such a system — the result of the spirit of law schools which teach that lawyers and judges are the only protectors of our liberties in all matters — is certainly at fault. The blame rests largely on the law schools for failing to teach the real science of government in relation to these matters and for sending men into our public life who acquiesce in such ideas. Two men were talking about this very case and one, not a lawyer, was protesting that the system which permitted such a situation was not right.

The other, a prominent lawyer, said, "Why, you are talking like a fool; while I was district attorney of —— county, almost my entire time was spent counteracting the work of that fool county board."

Such are the conditions; the remedy is plain. There is a science of statute law which is yet to be developed. The possibility of a jurisprudence in the field of statute law making has been realized by few people. Even in England, where an official draftsman is employed, practically nothing has been done to gather the history of statutory enactment.

Says Professor Ernst Freund in his article upon "Legislation and Jurisprudence": —

"For the vast majority of the acts on the statute books of our States, the reasons or considerations inducing their adoption have not been formulated. There has often been no discussion in the legislature whatever, or if there has been, only incomplete accounts of the debates have been preserved in the daily press. It is otherwise with regard to the more important legislation of congress and, in a number of States, with regard to the enactment of constitutions. In some branches of administrative legislation there are comments and recommendations of official authorities, and revisers' notes furnish for a few States valuable material. The whole amount of this source material is poor as compared with what the official publications of England, France and Germany afford. A great amount of information for legislative history is scattered through the law reports, in cases construing statutes and pointing out defects, which led to appropriate amendments. But the current

digests pay no particular attention to this feature of the law reports, and the information is therefore not in a readily available form and has not to any considerable extent been utilized.

"As for the history of operation of statutes, there has never been any systematic observation of the working of the laws of persons, property or contracts. Excepting the subjects of bankruptcy, divorce and to some extent of personal injuries, there are no civil judicial statistics, still less, of course, any information regarding the legal relations that do not reach the courts. In codifying the German civil code, use was made of data collected by the government regarding the prevalence of certain forms of marital contracts and testamentary dispositions; nothing of this kind would be available in the United States. The census bureau in Washington would be the only organization in this country to gather information of this kind, and there is no present prospect of its undertaking so far-reaching and difficult a work. Nor is there any near prospect that our States will undertake the collection of judicial statistics. General impressions instead of exact and systematic observations will, for a long time to come, be the basis upon which the policy of our civil legislation will be built, and there is no promise of any radical advance of jurisprudence in this respect.

"With regard to revenue and police legislation, however, the outlook is much more hopeful. A considerable amount of information is even now available in the official reports of the authorities charged with the administration of the various acts, which naturally deal to a considerable extent with the administrative and judicial aspects of legislation. With the multiplication of controlling and regulating boards, more and more light will be thrown upon the operation of principles of constitutional and administrative law.

"All this material ought to be collated and digested in the same manner as is now done with judicial decisions, and the result

should be the construction of a body of principles of legislation to supplement the existing body of principles of law. Both in its material and in its method this branch of legal science must differ considerably from the judicial jurisprudence with which we are most familiar; but it is a department of our science equally legitimate and valuable, and destined to grow in importance with the increasing legislative activity of the modern state. . . .

"Exhaustive inquiry into the conditions to be regulated, impartial consideration of all interests concerned, and skilled and careful draftsmanship are equally indispensable requirements to produce legislation that is to avoid both inefficiency and injustice. In England, France and Germany the observance of these conditions is made possible by the fact that the respective governments introduce all important bills, that they have the greatest facilities for ascertaining the facts underlying the proposed measure, and that they command the services of highly qualified officials acting as draftsmen. These conditions cannot be easily reproduced in a country in which the government has no initiative in legislation, and in which it is often very difficult to place the reponsibility for the framing and the introduction of a measure. In recent years a few States have made provision for officials who are to aid in the drafting of bills, and for the systematic collection of information regarding legislation and legislative problems, and a great deal of valuable statistical work is done by official bureaus in the States and in Washington. It is to be hoped that these efforts in the direction of improving and harmonizing methods of legislation will, in the near future, be further extended, and especially that they will receive the active support of legislative bodies."

Besides the data which Professor Freund mentions there is also a large body of material which should be

gathered, indexed and classified. The expedients which are put into laws to make them effective, the decisions and rules of administrative commissions, the decisions of attorney-generals, bar associations, reports upon codification, model laws or uniform laws — all this data, if made available, would aid the legislator in his task. Such material will help him to find out what he can do, and although the classification of this data is a great task, it should be begun by some one. If the legislator has at hand this data and makes use of it as the judge makes use of the law library and also the skilled draftsmen, his task is made easy and we may hope for better legislation. With the clerical help of a skilled man at his command he can represent his constituents more efficiently.

For those who decry the importance of statute law, let me call attention to the fact that common law means speedy and certain justice and those who profess to revere common law must look upon a statute creating an efficient railroad commission as the rehabilitation of the common law. If this is so, surely the scientific data relating to railroad commissions which can be collected will be of the greatest service to our legislators and to our courts in the formulation of "juridical principles" and in the adjustment to modern conditions of those ancient principles which we have been taught to revere and to believe are the foundation of our liberty and justice.

Conceding that the legislator is able and honest and that many of the proposed remedies here mentioned will be to a degree efficacious, what remedy can be proposed which will meet the circumstances squarely and help to build up our statute law?

Let us suppose that the supreme court of the United States was deprived for one instant of all cases, precedents and the body of jurisprudence which has accumulated, what would result? Would not the efficiency of our judiciary be greatly diminished? Yet the striking thing is that the man who makes the law, who fits it to economic conditions, has no such body of guiding principles to help him. His task is tenfold more difficult than that of the judge.

This will seem strange to the lawyer, who will immediately say that he has the decisions of the courts. So he has, but they do him little good. They give him the limitation but often no positive guidance. Let the man who wishes a perfect state law regulating the issue of stocks and bonds of corporations try to draft such a law if he wishes to learn what positive principles, legal or economic, he can sift out from the mass of legal decisions which must be consulted.

Let the legislator try to make a law regulating rebates and he will find at once that the kinds of economic rebates may be many times greater than will fit any definition of the courts. It is necessary to have this

economic data as well as the legal and we must find out how these laws work so as to profit by the experience of others. This is no small task. It is a far greater problem than that of building up a law library or gathering jurisprudence of the past.

Professor Ernst Freund in a recent pamphlet upon "Legislation and Jurisprudence" says: —

"What does it mean, to say that the fundamental law secures a certain amount of liberty, if it is not said how much, or that it forbids unjust discrimination, if the injustice is not defined? It is the merest commonplace that some restraint of liberty of contract and business, some discrimination, is not merely valid, but essential to the interests of society. Can the fundamental law be satisfied with the proclamation of rights of absolutely indeterminate content, directly contrary to other recognized principles, or is not limitation and definition of some sort absolutely essential to an intelligible rule of law? The courts have given us criticism, denunciation, and condemnation, but no positive guidance. The course of adjudication is marked by divided jurisdictions and divided courts, resulting in a lamentable uncertainty as to the limits of legislative power."

What is needed is a body of jurisprudence or quasi-jurisprudence — the formation of a body of principles directly relating to the whole subject of statute law. The judge goes into the law library and finds the classified law and jurisprudence of the past; the legislator comes for a few months every year to make laws with no such data at his command.

There is no man for whom the study of comparative legislation will be of more benefit than the business man. Whether we wish it or not, we are taking up the things with which Europe has been working. The great danger is that radicals will force these things upon us without careful study. We see Germany advancing in this industrial progress despite laws which the business man in America would look upon as ruinous. It means that Germany has an administration and conditions which make these laws helpful instead of hurtful to the business man. These laws must not be incorporated into our statutes without any study whatsoever. The study of comparative law and the gathering of data which will show the benefits of these laws should be encouraged by the business man of America.

The necessity for the study of comparative law and comparative institutions in America is demonstrated repeatedly in a department like the legislative reference department. For instance, a man brought to this department for drafting, a bill which was to be introduced in the Wisconsin legislature. Upon research it was found that the bill related to special assessments in the city of Philadelphia. The bill would have been entirely out of harmony with the Wisconsin laws and it would have been a disaster had that law been written into the Wisconsin statutes.

This situation is well depicted in a conversation between a man from Iowa, who had charge of the state

prison there, and a South Carolinian, who held a similar position in his state. The Iowa man told about the beauty of the Iowa law and how, instead of making hopeless criminals, the idea was to fit up the prisons so well that the men would receive encouragement, hope, and also the decent necessities of life, with occasionally little comforts. The idea, he said, was not to utilize the prisoner by making him a mere hopeless animal. The South Carolina man listened in wonder. "Why," said he, "how do you-all keep them out of prison? If we had such conditions down in South Carolina we would have all of our poor white people and our negroes in jail."

The laws must be adapted to the economic, industrial and social conditions of *each* community, for the different communities vary in America.

Is it not a sensible and safe thing to create some bureau on a large scale for the study of comparative law and jurisprudence?

Diagram VII is suggestive of the manner in which this comparative law — which may be termed, for lack of a

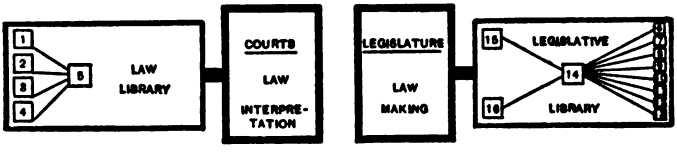

DIAGRAM VII

better name, "Jurisprudence of statute law" — may be used so that it may be of some direct help to the legislator.

The mass of data represented by 1, 2, 3, 4, 5, the judge uses in the interpretation of law. The mass of data represented by 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, the legislator uses in the making of law. He must not only use what the judge uses but he must also obtain the facts, sociological and critical.

The legislation throughout the world, the model laws, the cases which interpret them, the opinions of administrative officers, the investigation of economists and the statistics of the actual working of laws — a collection of this data is absolutely necessary and especially so to-day, when economic conditions are so constantly shifting and changing.

Of course the above diagram does not tell the whole story. A law is made not by the courts or by the legislature or still less by administrative bodies. It is made by all of these forces. It is good in such proportion as these bodies are efficient and as their procedure is just and rapid.

However strong a statute may be, if its enforcement is subject to tedious delay caused by outworn procedure the law is not so efficient. If a statute fails of enforcement because of the inefficiency of corrupt administrators, then again so much is taken from our law.

It is plain to any one who has read thus far that in Wisconsin we have begun some sort of a systematic study for the improvement of the general conditions affecting

legislation. The following diagram (VIII) illustrates just how this study is proceeding. It may provide a suggestion for a new kind of law school, one which will include all of the studies necessary if representative government is to continue to exist and retain the confidence of the people.

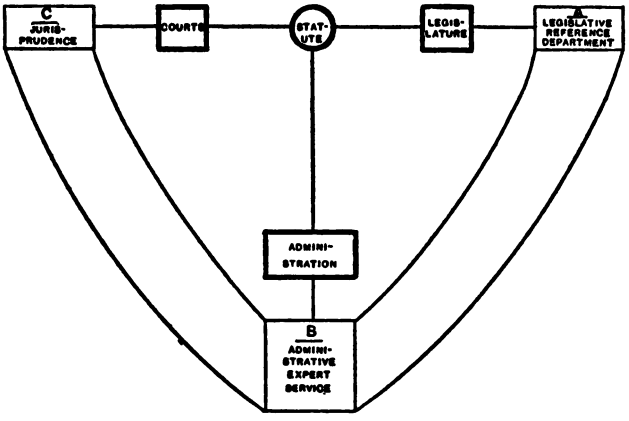

DIAGRAM VIII

Here are three great fields for research: —

A. Legislative method and statute law.

B. Administrative methods.

Expert help.

C. Real jurisprudence, broad study of legal principles and procedure.

In the centre of the plan is the word "statute." To the right is a square representing the legislature. Now this diagram is to demonstrate that the law is not made by any one body — by the legislature, the administration,

or the courts — but by all of them. If the legislature constructs the law properly, there is a chance that the administration and the interpretation of the courts will be good. But if the legislation is wrong in the beginning, there is no chance for any other body to rectify it to any degree. So the suggestion is simply this: we must build behind the legislature a body of comparative law and experience to demonstrate how these laws may be better made. To accomplish this we need the architectural department which has been described in the preceding chapter.

This mass of comparative data cannot be properly built up unless our law schools, our political science and economic departments, coöperate so that we may study the principles of statute law, of legislative procedure, and the whole machinery of law-making. Our schools must go even further than this; they must study scientifically the whole question of administration. In the diagram on page 251, "*A*" must accompany "*B*." Our administrative bodies must be based upon solid principles and to thoroughly understand these principles of administration, we must study and discuss them. The establishment of the "Training school for public service" in New York City, connected with the "Bureau of municipal research," is an example of what may be done in this field. The time has passed when political scientists only talk of these things; they must be studied close at

hand and something done speedily to remedy conditions. We must study the procedure of the courts in reference to the actual making of the law and its administration; and our law schools must institute departments for research into law. Until such departments are established in our law schools, they will continue to turn out attorneys, not lawyers. We have here in Wisconsin made a slight step forward in the collection of material and its classification in the legislative reference department. Students not only from the state but from the entire country are availing themselves of its material. As examples of "*B*" we have the work of the expert commissions and classes in the principles of administration in the university and the public affairs board created by the 1911 legislature, having for its duties the reorganization of the administrative bureaus and the establishment of efficiency records and uniform accounts. Illustrative of "*C*," we have comparatively little, but the regents of the university have set aside a small fund for the study of criminal procedure. University professors connected with the law school have been actively working in this field. A strong branch of the Society for the reform of criminal procedure exists and an active campaign is being carried forward. It must be said, however, that in none of the fields, "*A*" "*B*," or "*C*," has the law school given the help it should. It is, however, to the views of Wisconsin judges that we owe the forward movement in the work of "*C*."

A page from the catalogue of the University of Wisconsin illustrating courses which relate to public matters.

26. The Theory and Practice of Legislation. A study of the methods of procedure of legislative bodies, and the preparation of the subject matter and form of bills. The legislature is in session from January to June, in the odd-numbered years. *Throughout the year; Tu., Th.*, 11. Mr. LLOYD JONES, Mr. MCCARTHY.

28. Comparative Study of Constitution Making. Mr. LOWRIE.

29. Teachers' Course. Methods of teaching government in secondary schools. *Second semester; Th.*, 4 *to* 6. Mr. MCBAIN.

30. Judicial Administration. A study of the organization, jurisdiction and actual operations of the courts, with an inquiry into their defects in the administration of justice. *First semester; Tu., Th.*, 2:30. Mr. HALL.

31. Latin-American Political Institutions. A comparative study of the constitutional and administrative systems of the Latin-American Republics. *First semester; M., W., F.*, 10. Mr. REINSCH.

32. Current Political Topics. Study of current political problems, with training in the discriminating use of sources and in effective literary presentation. A training course designed for students preparing for journalism. *Throughout the year; Tu., Th.*, 10. Mr. BAILEY, Mr. CURTIS.

33. Practical Bill Drafting. A study of the technique of bill drafting, with practice in drafting actual measures. Open to senior and graduate students. *Second semester; M., F.*, 7. Mr. MCCARTHY, Mr. LLOYD JONES.

34. Rural Government. A study of the development and present

condition of county, township, and village government. *First semester; M., W., F.*, 11. Mr. BAILEY.

35. Conservation of Natural Resources. A study of the problems of conservation and reclamation in the United States. *Second semester; Tu., Th.*, 8. Mr. BAILEY.

36. American Diplomacy. A study of the principal contemporary problems of the United States in foreign affairs; the participation of the United States in the development of International Law; the organization of the diplomatic service; the product of diplomatic action. (Given 1910–1911 and alternate years.) Mr. REINSCH.

37. Contemporary International Politics and Diplomatic Problems. A study of the present grouping of the powers and their mutual relations. *First semester; W., M., F.*, 11. (Given 1911–1912 and alternate years.) Mr. REINSCH.

42. Public Utilities. A comparison of public regulation and public and private ownership of municipal utilities in American states and foreign countries, including constitutional and judicial limitations, delegation of legislative power to commissions, physical valuation, reasonable rates and service, organization of public employees, cost, efficiency, social and political results. *First semester; M., W., F.*, 8. Mr. COMMONS, Mr. DUDGEON.

WISCONSIN JUDGES

It has been said previously that the Wisconsin legislature would probably not apply the recall to judges. We have been fortunate, indeed, to have on our bench men who have taken as broad a view of constitutional law as any court in this country. This fact is well known

throughout the country and need not be dwelt upon here. Our judges are elected for long terms on a non-partisan basis and if the recall were in force in this state it would be impossible to recall any of them. In striking contrast to the New York workmen's compensation decision are herewith presented excerpts from Judge Winslow's opinion in the Wisconsin case. For its boldness as well as literary merit, it stands as a monument of its kind and a living rebuke to the pettiness and chicanery exhibited in courts like those of Illinois and California.

"In approaching the consideration of the present law we must bear in mind the well established principle that it must be sustained unless it be clear beyond reasonable question that it violates some constitutional limitation or prohibition.

"That governments founded on written constitutions which are made difficult of amendment or change lose much in flexibility and adaptability to changed conditions there can be no doubt. Indeed, that may be said to be one purpose of the written constitution. Doubtless they gain enough in stability and freedom from mere whimsical and sudden changes to more than make up for the loss in flexibility, but the loss still remains, whether for good or ill. A constitution is a very human document, and must embody with greater or less fidelity the spirit of the time of its adoption. It will be framed to meet the problems and difficulties which face the men who make it and it will generally crystallize with more or less fidelity the political, social and economic propositions which are considered irrefutable, if not actually inspired, by the philosophers and legislators of the time; but the difficulty is that, while the constitution is fixed or very hard to change, the conditions and problems

surrounding the people, as well as their ideals, are constantly changing. The political or philosophical aphorism of one generation is doubted by the next, and entirely discarded by the third; the race moves forward constantly and no Canute can stay its progress.

"Constitutional commands and prohibitions, either distinctly laid down in express words or necessarily implied from general words, must be obeyed and implicitly obeyed so long as they remain unamended or unrepealed. Any other course on the part of either legislator or judge, constitutes violation of his oath of office; but when there is no such express command or prohibition, but only general language, or a general policy drawn from the four corners of the instrument, what shall be said about this? By what standards is this general language or general policy to be interpreted and applied to present-day people and conditions?

"When an eighteenth century constitution forms the charter of liberty of a twentieth century government must its general provisions be construed and interpreted by an eighteenth century mind surrounded by eighteenth century conditions and ideals? Clearly not. This were to command the race to halt in its progress, to stretch the state upon a veritable bed of Procrustes.

"Where there is no express command or prohibition, but only general language or policy to be considered, the conditions prevailing at the time of its adoption must have their due weight, but the changed social, economic and governmental conditions and ideals of the time, as well as the problems which the changes have produced, must also logically enter into the consideration, and become influential factors in the settlement of problems of construction and interpretation.

"These general propositions are here laid down, not because they are considered either new or in serious controversy, but

because they are believed to be peculiarly applicable to a case like the present, where a law which is framed to meet new economic conditions and difficulties resulting therefrom is attacked principally because it is believed to offend against constitutional guarantees or prohibitions couched in general terms, or supposed general policies drawn from the whole body of the instrument."

Again: —

"The next important contention is that the law is unconstitutional because it vests judicial power in a body which is not a court and is not composed of men elected by the people, in violation of those clauses of the state constitution which vest the judicial power in certain courts and provide for the election of judges by the people, as well as in violation of the constitutional guarantees of due process of law. It was suggested at the argument that the Industrial Commission might perhaps be held to be a court of conciliation, as authorized to be created by Section 16 of Article VII of the state constitution, but we do not find it necessary to consider or decide this contention. We do not consider the Industrial Commission a court, nor do we construe the act as vesting in the Commission judicial powers within the meaning of the Constitution. It is an administrative body or arm of the government which in the course of its administration of a law is empowered to ascertain some questions of fact and apply the existing law thereto, and in so doing acts *quasi*-judicially, but it is not thereby vested with judicial power in the constitutional sense.

"There are many such administrative bodies or commissions, and with the increasing complexity of modern government they seem likely to increase rather than diminish. Examples may be easily thought of, — town boards, boards of health, boards of review, boards of equalization, railroad rate commissions, and public

utility commissions all come within this class. They perform very important duties in our scheme of government, but they are not legislatures or courts. The legislative branch of the government by statute determines the rights, duties, and liabilities of persons and corporations under certain conditions of fact, and varying as the facts and conditions change. Manifestly the legislature cannot remain in session and pass a new act upon every change of conditions, but it may and does commit to an administrative board the duty of ascertaining when the facts exist which call into activity certain provisions of the law, and when conditions have changed so as to call into activity other provisions. The law is made by the legislature, the facts upon which its operation is dependent are ascertained by the administrative board. While acting within the scope of its duty, or its jurisdiction, as it is sometimes called, such a board may lawfully be endowed with very broad powers, and its conclusions may be given great dignity and force, so that courts may not reverse them unless the proof be clear and satisfactory that they are wrong."

Proceeding on an entirely different theory and yet setting forth a more startling recognition of new, economic forces in legislation, Judge Marshall chides the legislature on the fact that it has not previously subjected to the court this question of workmen's compensation. The judge holds that the constitution must, through its very nature, contain power of this sort and practically invites the legislature to test the constitution if the legislature has a law which is made in accordance with economic industrial right. The judge evidently believes that the constitution was made to include a body of rights broad

enough to last for all time and that the burden of proof is on the judge who would declare unconstitutional a law within the broad words of the preamble of the constitution.

"How are we to determine when the purpose of a law, in the field of police power, and unaffected by any express prohibition, is legitimate? It seems the answer is easy. Look first to the purpose of the Constitution, found in the declaration, 'Grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect union, insure domestic tranquillity and promote the general welfare' we 'do establish this Constitution.' Then to the central thought — the very superstructure — upon which the whole was builded: 'All men are born equally free and independent and have certain inherent rights, among those are life, liberty, and the pursuit of happiness.' There is voiced a broad spirit, covering as this court has, in effect, many times said, a field as limitless as are human needs. The language was not used for mere rhetorical ornamentation or effect, but to suggest the permissible scope of legislation in the zone of general welfare, its extent and its limitations. . . .

"So here, as it seems, the initial question was this: Is the purpose of the law legitimate, within the broad dominating spirit mentioned? The answer must be yes, as the manifest purpose is to promote every element of the central thought of the Constitution. Anything fairly within that has always been and must, necessarily always, be held legitimate. Keeping in mind that in the selection of means the Legislature has a very broad comprehensive field in which to freely make a choice, the next question is, Are the means contemplated reasonably appropriate to the end to be attained? Not are they the best means, but are they proper

means, in that they are not within any express prohibition and tend to conserve rather than to destroy? All must agree in the affirmative on that in harmony with the best thought of all the more civilized nations of Europe. The difficulty here has been, want of appreciation of the great economic truth, that personal injury losses incident to industrial pursuits, as certainly as wages, are a part of the cost of production of those things essential to or proper for human consumption, and the more direct they are incorporated therein, the less the enhancement of cost and the better for all."

Again, in the domain of procedure, listen to the wise words of Chief Justice Winslow on the delay of justice: —

"The ancient doctrine that the accused could waive nothing was unquestionably founded upon the anxiety of the courts to see that no innocent man should be convicted. It arose in those days when the accused could not testify in his own behalf, was not furnished counsel, and was punished, if convicted, by the death penalty or some other grievous punishment out of all proportion to the gravity of his crime. Under such circumstances it was well, perhaps, that such a rule should exist, and well that every technical requirement should be insisted on, when the state demanded its meed of blood. Such a course raised up a sort of barrier which the court could utilize when a prosecution was successful which ought not to have been successful, or when a man without money, without counsel, without ability to summon witnesses, and not permitted to tell his own story, had been unjustly convicted, but yet under the ordinary principles of waiver, as applied to civil matters, had waived every defect in the proceedings.

"Thanks to the humane policy of the modern criminal law we have changed all these conditions. The man now charged with

crime is furnished the most complete opportunity for making his defence. He may testify in his own behalf; if he be poor, he may have counsel furnished him by the state, and may have his witnesses summoned and paid for by the state; not infrequently he is thus furnished counsel more able than the attorney for the state. In short, the modern law has taken as great pains to surround the accused person with the means to effectively make his defense as the ancient law took pains to prevent that consummation. The reasons which in some sense justified the former attitude of the courts have therefore disappeared, save perhaps in capital cases, and the question is, Shall we adhere to the principle based upon conditions no longer existing? No sound reason occurs to us why a person accused of a lesser crime or misdemeanor, who comes into court with his attorney, fully advised of all his rights and furnished with every means of making his defense, should not be held to waive a right or privilege for which he does not ask, just as a party to a civil action waives such a right by not asking for it.

"Surely the defendant should have every one of his constitutional rights and privileges, but should he be permitted to juggle with them? Should he be silent when he ought to ask for some minor right which the court would at once give him, and then when he has had his trial, and the issue has gone against him, should he be heard to say there is error because he was not given his right? Should he be allowed to play his game with loaded dice? Should Justice travel with leaden heel because the defendant has secretly stored up some technical error not affecting the merits, and thus secured a new trial because forsooth he can waive nothing? We think not. We think that sound reason, good sense, and the interests of the public demand that the ancient strict rule, framed originally for other conditions, be laid aside, at least so far as all prosecutions for offenses less than capital are concerned. We

believe it has been laid aside in fact (save for the single exception that trial by a jury of twelve cannot be waived unless authorized by a specific law) by the former decisions of this court.

"It is believed that this court has uniformly attempted to disregard mere formal errors and technical objections, not affecting any substantial right, and to adhere to the spirit of the law which giveth life rather than to the letter which killeth. It may not always have succeeded; it is intensely human, but since the writer has been here he knows that the attempt has been honestly made.

"In this line the court is glad to welcome legislative assistance and approval. By ch. 192, Laws of 1909 (sec. 3072m, Stats.), it is provided that no judgment, civil or criminal, shall be set aside or new trial granted for any error in admission of evidence, direction of the jury, or any error in pleading or procedure, unless it shall appear that the error complained of has affected the substantial rights of the party complaining. How much this adds to the provisions of sec. 2829, which has been on the statute books since 1858, is not entirely clear. At least it shows the legislative intent to specifically apply the law to criminal actions. Its terms are clear, and will unquestionably assist the court in its efforts to do substantial justice in all actions, either civil or criminal, without regard to immaterial errors or inconsequential defects. This court will loyally stand by this law, and will earnestly endeavor to administer it so as to do equal and exact justice so far as human effort can accomplish that end." (Hack *v.* State, 141 Wis. 346, pp. 351–353.)

Judge Marshall, who for many years has withstood technicalities and delay of the law in no uncertain terms, has given the writer permission to use the following description of the work of our courts: —

"Is there not some danger of the public being misled by the agitation respecting inefficiency of criminal procedure? It should not be thought because of apparent failures of justice in a case now and then, and apparently unnecessary delay and expense in disposing of criminal cases in some of the large cities, that the administration of the law in Wisconsin can be judged thereby. In this state, persons accused of crime are, as a rule, promptly tried, and, doubtless, are convicted when they ought not to be, quite as often as they are acquitted when they ought not to be. Criminal cases are removable to the Supreme Court at very moderate expense and when so removed are generally and finally disposed of in from two to five months. Furthermore, the number of cases so removed are very few as compared with the total number tried.

"It will greatly surprise some persons to be told, as the fact is, that during the period of six years covered by the last twenty-two volumes of Supreme Court reports, there have been no less, probably, than four thousand trials of criminal cases in this state and three thousand convictions, while only one hundred and one cases were removed to the Supreme Court, or about two and one-half per cent of the number tried and five per cent of the number of convictions. Moreover, not more than five per cent of the total of all kinds of cases taken to the Supreme Court were criminal cases. Of those four were reversed, or one and one-third per cent of cases tried resulting in convictions.

"The foregoing can be better appreciated by considering that removals of criminal cases to the Supreme Court have averaged about one to a county once in four years, and reversals, one to a county once in ten years.

"About one-third of all the criminal cases removed to the Supreme Court during the period named, were from Milwaukee county, and yet the yearly number from there has been but about

five. Two-thirds of all removals were from Milwaukee county and five other circuit jurisdictions, leaving only about thirty cases from eighteen other trial jurisdictions, including county and municipal judges, or on the average of one case every three years. From one circuit judge's jurisdiction, and those of several judges of inferior courts, there has not been a removal of a criminal case to the Supreme Court during the six years.

"A careful examination of the opinions of the Justices will show that, there were many affirmances regardless of plain errors, that being intended to be the course where it did not appear that, had the error not occurred, the result might probably have been otherwise. While it may be that a reversal occurred, now and then, on a ground which some would regard technical or inconsequential, the rule has been otherwise, and as to exceptions, if there be such, they occurred from an honest reasonable difference of opinion as to the effect of the errors on the result, or an honest reasonable belief that they were neither technical nor inconsequential.

"There will be found on the average, a fraction less than two reversals in criminal cases in each of the last twenty-two volumes of reports, containing a little less than one hundred cases of all kinds, including five criminal cases.

"In reading the foregoing, it must be remembered that the result on appeal in each case, with but few exceptions, was concurred in by all. So the proportion of opinions in cases reversed, written by any particular Justice, does not have any particular significance."

If these great judges recognize that justice must be made speedy, that ancient form must give way to modern, that the constitution is broad enough to cover all injus-

tice and wrong, is it not about time that our law schools are awakening to the situation? The recent progress made along this line at Harvard under Professor Roscoe Pound, and at Pennsylvania under Dean Lewis, and the establishment of the "Bureau of legislative drafting" in connection with Columbia university are excellent signs of the times. The establishment of a legislative reference bureau as part of the work of Harvard and the establishment of numerous municipal reference departments in various universities modelled to some extent after the Wisconsin bureau, are also encouraging.

But we are in the midst of great struggles in America; the power of the courts in these contests must be well defined. Good men die and public opinion cannot often bear evenly and justly upon judicial bodies. The struggle for new forms and to meet new conditions is Titanic — witness the Standard oil and the tobacco cases. Even mightier struggles are to come, if the readjustment of economic conditions and law is made to the satisfaction of the people. Says the great German jurist, Dr. Rudolph von Ihering, in the "Struggle for Law": —

"This struggle reaches its highest degree of intensity when the interests in question have assumed the form of vested rights. Here we find two parties opposed each to the other, each of which takes as its device the sacredness of the law; the one that of the historical law, the law of the past; the other that of the law which is ever coming into existence, ever renewing its youth, the eternal,

primordial law of mankind. A case of conflict of the idea of law with itself which, for the individuals who have staked all their strength and their very being for their convictions and finally succumb to the supreme decree of history, has in it something that is really tragic. All the great achievements which the history of the law has to record — the abolition of slavery, of serfdom, the freedom of landed property, of industry, of conscience, etc., all have had to be won, in the first instance, in this manner by the most violent struggles, which often lasted for centuries. Not unfrequently streams of blood, and everywhere rights trampled under foot, mark the way which the law has travelled during such conflict. For the law is Saturn devouring his own children. The law can renew its youth only by breaking with its own past. A concrete legal right or principle of law, which, simply because it has come into existence, claims an unlimited and therefore eternal existence, is a child lifting its arm against its own mother; it despises the idea of the law when it appeals to that idea; for the idea of the law is an eternal becoming; but that Which Has Become must yield to the new Becoming, since— Alles was entsteht,

'Ist werth dass es zu Grunde geht.'"

Let us suppose that the Wisconsin court followed the New York court. Let us suppose that the New York courts again and again disregarded the will of the people, that they overreached themselves and bound the legislature hand and foot. What are we going to do about it? In the milder method of usurpation of power by decisions the courts have encroached upon the field of legislation — and is this not the true reason for the dis-

content with the courts? When this is true, is there not another legislative body above and beyond that elected by the people? The chief legislative problem before us in many states — the problem which has required all our best energy in the past — is the creation of fictions which will in some way allow the acts demanded by the people and acknowledged to be necessary, to exist on our statute books, in spite of the limits of the federal and state constitutions as interpreted by thousands of decisions. It is not my purpose to go into history. It is generally understood that the United States constitution never gave the right to the courts to declare laws unconstitutional, but that the right has come mainly from the case of Marbury *vs.* Madison, 1803. However wise that decision may have been at the time, the assumption of control over legislation and consequently the assumption of legislative power by our courts, must now be regarded as the most unfortunate expansion of our unwritten constitution which has ever taken place in this country. The field of the legislature has been gradually narrowed and more and more responsibility taken from it. How often we have seen just and right legislation checked or choked by an array of decisions which seem to block the way at every step! How often the powers opposed to all progress have cited these with mighty dignity until the legislature, benumbed and confused, has yielded to what seemed to be an insurmountable mass of judge-made

wisdom! The constitution has become discredited in the eyes of the people; is looked upon as an instrument to stop all progress toward regulation of what ought to be controlled, and yet such is far from the fact in many cases. It is the spurious decisions — the dead weights of precedent — which are in the way, not the constitution itself.

But the system is here; its menace is always present and legislation or the science of legislation cannot go forward until something is done to remedy these conditions. Something must be done for the safety of our courts because sooner or later the people will say, "If you legislate as well as interpret — if you are a legislative body, we cannot allow you to exist unless we have control over you." If the recall of judges is rampant in the land there is a reason for it, and, from a theoretical standpoint, a sound one; it simply means control of a legislative body. The constitutional initiative means the same thing. If the judges have rendered decisions which tie the legislature and the people hand and foot, a change in the constitution, rising from the people and eradicating the decisions which obstruct the way, can be effected through this new device. In either case, the fundamental reason is the same; the judges are usurping legislative functions, and a *legislative body which is neither elected nor recalled is inconceivable in a republic.* The writer is not sure but that a recall applied to a judge who has gone into the legislative field is a good thing and may be made prac-

tical. If our government is a government of checks and balances and the courts may declare a law passed by a legislature unconstitutional, who is to pass upon an unconstitutional decision of the judges? Would it not be a good device in New York to have on the ballot at the next election the question, Is the decision of the court of appeals in the workmen's compensation case constitutional? — and let the people from whom this constitution sprung have as much interpretive power as the judges whom they elect? Does any one doubt but that the people of New York would sustain that law overwhelmingly? If so, what better test have we of its constitutionality? It might be advantageous to have some provision so that in case the decisions of a judge were overturned several times by popular vote, the judge would be subject to recall as being unable to interpret the constitution. The writer is a firm believer in representative government and is of the opinion that the legislature will never reach its highest dignity and responsibility until some device is used to hold the court within its proper sphere.

Think of the confusion that is now arising in our country because of this power! Ten, yes, even twenty years after a law has been enacted, after property rights have grown under it, suddenly there may be a decision declaring that law unconstitutional. Could anything be more conducive to chaos? What has been said above

applies with double force to the federal courts. There is no way of changing the constitution except by that supreme legislative body, the supreme court of the United States. Would it not be better to change the fifth article of the United States constitution so that the constitution could be modified or at least some of the decisions which have been made relating to it be effaced? Could not such an alteration be brought about by providing, for instance, for a change by a majority of congress and a majority of the states instead of a system which no one can change save the supreme legislature, stimulated by raging and threatening public opinion? Would it not be better for the safety of the courts in the long run to allow this little leeway? Meanwhile, if, by the establishment of a real study of jurisprudence in our law schools, expert help and the collection of scientific data for our legislators, we can help our law-makers to put the will of the people into a noble, clear, dignified form, we can aid greatly to a solution of this problem. If the people show that they desire a certain piece of legislation, the legislature, whatever may be the accumulation of decisions to be surmounted, should not hesitate to pass it in a form economically and technically correct and submit it to our courts — and let them destroy it at their peril! Fortunate circumstances in this state, of which there has been some mention, have made it possible to place before our court the principal statutes,

not without error it may be said, but always in fairly good technical shape. The thorough study of the economic conditions made by our legislators before those statutes were enacted, and the patience with which hearings have been held and testimony taken, have had their reward in the harmony between the courts and the legislature so long observable in the state. It is good for the legislature, and for the courts as well, to have the care and the help which comes from some machinery at the hand of the legislator to help him to carry out the will of his constituents.

CHAPTER X

Conclusion

The legislation discussed thus far in this little book has been selected because it shows most clearly the fundamentals of the Wisconsin idea. To describe all the laws which have been passed, their significance, enforcing devices and administrative features would necessitate a large volume, hence only the general trend of legislation has been considered. The session of 1911 was perhaps the most remarkable session ever held in any state, not only in the humanitarian spirit of the laws but also in the daring manner in which great questions were handled. The work was carefully done, and although a part of it was fragmentary in its nature, so much so that it may have to be redrafted, none of it presents any real menace to business or prosperity. The conservative Wisconsin legislator is very careful to build well as he advances, and there is no great resentment against any of these laws. The water power law is the only one which has been declared unconstitutional. The income tax was not received with much enthusiasm at first, but as the people have come to understand it, this feeling has

died away. The other laws have met with general approval.

As an example of the sort of legislation of the session of 1911, there is a fairly accurate newspaper account in the Milwaukee *Free Press* of July 6, 1911, under the heading, "Constitutional amendments." Following is a digest of this article.

The following proposed amendments to the constitution were adopted this year: —

The initiative, referendum.

Providing that the salaries of members of the legislature shall be $600 per annum, instead of $500 for each biennial session.

Permitting cities to acquire lands for park purposes.

Permitting the state to install a system of insurance against sickness, death, accident and invalidity.

Permitting the state to appropriate for internal improvements — "for the purpose of acquiring, preserving and developing the water power resources and forests of the state"; limiting the appropriation therefor to a $\frac{2}{10}$ of a mill tax on the property of the state.

Empowering the legislature to provide for the recall of any public elective officer, except judges.

Declaring "all lanes, mineral rights, water powers and other natural resources of natural wealth within the state which are now or may thereafter become the property of the state, shall remain forever the property of the state and shall not be alienated"; permitting the state to lease or rent such resources; and providing that all mineral rights hitherto reserved in contracts, deeds or instruments conveying real estate are abolished after Jan. 1, 1920,

and are declared to inhere to the state except where they have been developed in full or in part prior to Jan. 1, 1920.

The following constitutional amendments were adopted at the 1909 and also the 1911 session and will be submitted to the people at the general election in 1912: —

Permitting municipalities to acquire land within or outside their limits, for park or other public purposes and to plat or sell any part of such land for the purpose of adding to a fund for the maintenance of parks, playgrounds, etc.

Permitting the state legislature to remove the five per cent limit upon the public debt of any city, county, town, village or school district, when the debt is incurred for the purpose of purchasing and improving public parks, etc.

The following under the heading "Public health and welfare," show what was accomplished in this line:

Empowering county boards, with the consent of the state board of control, to erect upon grounds of county insane asylums, hospitals for the care of chronic insane affected by pulmonary tuberculosis. — Chapter 461.

Authorizing the secretary of the state board of health to provide biennially for a state conference of health officers and health commissioners of cities and villages. — Chapter 465.

Empowering county boards of supervisors to purchase sites and establish quarters for the treatment of persons suffering from tuberculosis in advanced or secondary stages. — Chapter 457.

Specifying the manner in which the state shall care for dependent, neglected, and delinquent children. — Chapter 460.

Making pandering a felony and providing a penalty therefor. — Chapter 420.

Empowering the state board of health to abate nuisances caused by the pollution of streams and public water supplies. — Chapter 412.

Making it unlawful to store or exhibit fruits, vegetables, or other food products on any sidewalk or outside any place of business, unless covered by glass, wood or metal cases and providing a penalty therefor. — Chapter 379.

Requiring owners or occupants of public or quasi-public institutions to provide cuspidors and cleanse and disinfect same daily. — Chapter 330.

Making it unlawful to abuse, neglect, or illtreat any person confined in a police station or any other place of confinement, and fixing a penalty therefor. — Chapter 375.

Requiring trained nurses to register with the state board of health. — Chapter 346.

Making it unlawful to manufacture, sell, or transport adulterated or misbranded insecticides or fungicides. — Chapter 325.

Prohibiting the manufacturing and sale of certain kinds of firecrackers and fireworks. — Chapter 313.

Making it unlawful for physicians or surgeons to prescribe intoxicating liquor for any person, when unnecessary for the health of such person, and providing a penalty therefor. — Chapter 290.

Empowering common councils to regulate the emission of dense smoke into the open air within the corporate limits of any city, and within one mile therefrom. Chapter 314.

Making it unlawful to spit or expectorate in any public place. — Chapter 407.

Empowering health officers to take precautions against the spread of dangerous communicable diseases and prescribing the duties of principals of schools and parents, where such diseases are known to exist. — Chapter 44.

Making it a misdemeanor to sell or have in possession, canned goods containing any artificial coloring matter or bleaching compound and fixing the penalty therefor. — Chapter 46.

Prescribing the manner in which explosives may be manufactured and stored within the state. — Chapter 223.

Prescribing the duties of health officers in determining the diagnosis of contagious or infectious diseases. — Chapter 248.

Extending the police authority of agents and superintendents of certain humane societies. — Chapter 258.

Conservation received some attention also: —

Empowering boards of supervisors to lease swamp lands under certain conditions, and conferring the same powers upon the state board of forestry in certain sections of the state. — Chapter 238.

Making it unlawful to waste or maliciously destroy or impair any natural resources and providing a penalty therefor. — Chapter 143.

Making it unlawful to injure, mutilate, cut down, or destroy any shade tree on any street or highway in villages. — Chapter 459.

Requiring all engines operated in, through or near forest, or brush land to be equipped with screen or wire netting between March 1 and December 1 to protect such forest or brush land from fire. — Chapter 494.

Appropriating $50,000 a year for five years for purchase of lands for reforestration. — Chapter 639.

Labor was not ignored in this session as is shown by the following laws: —

Prohibiting the employment of children between the ages of 14 and 16 years unless there is first obtained from the commissioner of labor, state factory inspector or any assistant factory inspector

or from a judge of any county, municipal or juvenile court a written permit. — Chapter 479.

Requiring safety appliances and automatic feeding devices on corn shredders. — Chapter 466.

Empowering the state bureau of labor and industrial statistics to investigate contracts between employers and employees and making an appropriation therefor. — Chapter 453.

Increasing the scope of the state employment office located at Milwaukee. — Chapter 419.

Making it the absolute duty of an employer to guard or protect machines or appliances on all premises used for manufacturing purposes and to maintain same after installation. — Chapter 396.

Making it unlawful to employ labor by false representation and providing a penalty therefor. — Chapter 364.

Requiring owners or occupants of all public or quasi-public institutions and factories to keep exit doors unlocked during working hours and requiring all such exit doors to swing outward. — Chapter 378.

Specifying the manner in which indenture and apprenticeship contracts may be made, and providing a penalty for non-compliance therewith. — Chapter 347.

Requiring safety appliances on dangerous machinery and sanitary conditions in factories. — Chapter 470.

Requiring contractors and owners, when constructing buildings in cities, to take proper precautions for the protection of workmen and specifying what precautions are necessary. — Chapter 49.

Requiring owners of factories and manufacturing establishments to provide proper ventilation for same and prescribing a penalty for non-compliance. — Chapter 170.

Limiting the hours of labor on public buildings to eight hours per day and fixing a penalty for non-compliance. — Chapter 171.

Limiting the hours of labor of women to ten a day or fifty-five a week (chapter 548); and of children under 16 years of age to eight a day and forty-eight a week (chapter 479).

Insurance

Among important insurance legislation enacted were bills curing the defect in the law relating to collecting the expenses of examinations so as to permit the department to make examinations as before; permitting a division of commissions between agents licensed to transact the same kind of insurance though but one is licensed for the company writing the insurance; authorizing the merger or consolidation of fire insurance corporations of this state under one or both of the old charters; authorizing the writing of surplus lines by licensed agents upon the granting of an additional license and the making of reports and payments of taxes secured by a bond; limiting investments in securities of any one corporation to 10 per cent of the admitted assets of the insurance company; providing that no insurance company may hold real estate except a home office building to a value not exceeding one-fifth of its admitted assets, and that other real estate acquired on mortgages must be disposed of within five years unless the time be extended by the commissioner; providing that town mutuals may write barns or outbuildings used in connection with detached dwellings in villages and cities, and not used for trade or manufacture; providing town mutuals may levy an assessment at any time for carrying on the business of the company; safeguarding the surplus of mutual companies by prohibiting the conversion of any mutual company into a stock company and further prohibiting the managing officers or other members from receiving in dividends or on dissolution of the company more than the premiums paid in with six per cent interest; amending the law to make clear the construction before

adopted by the department, that a newly organized admitted fraternal benefit society must, in addition to charging rates not less than the fraternal congress table of mortality, hold assets to meet a liability for the reserve on all its outstanding certificates on the same or a higher basis; prohibiting the issue of any deferred dividend certificate, policy, or other contract by a fraternal society.

Another enactment is a rewriting of the laws regulating fraternal societies, including the features of the Mobile bill, with the exception of the one requiring a compulsory increase in rates. Other new laws are as follows: requiring that the policies of assessment life companies, other than fraternal, be valued to ascertain how much has been accumulated toward a reserve and that the amount accumulated be carried to the credit of the individual members and a statement thereof given to any policy-holder; extending the anti-rebate law to cover all forms of insurance; providing for liability insurance against damage to property by accident; permitting the admission of mutual companies and inter-insurers; prohibiting the sale of any insurance stock unless the contract contains a provision informing the purchaser of the percentage of payment made by the subscriber which may be used for promotion and organization expenses, etc., limiting to 10 per cent of the amount paid by the subscriber the promotion and organization expenses, and for an investigation of fire insurance companies.

Court and Legal Procedure

Creating a commission of three members to be appointed by the governor and to be styled "Commissioners for the promotion of uniformity in legislation in the United States," and making an appropriation therefor. — Chapter 462.

Permitting a mortgagor, or his wife, assignee or assignees to

redeem property sold at a chattel mortgage sale within five days after such sale. — Chapter 410.

Authorizing county courts to appoint guardians for incompetent persons, such guardians to have authority to convey real estate belonging to said incompetents. — Chapter 367.

Permitting the amendment of pleadings in law and equity. — Chapter 353.

Relating to judicial redress for plaintiff on demurrer to complaint. — Chapter 354.

Increasing the annual salaries of justices of the Supreme Court from $6000 to $7500. — Chapter 508.

Permitting a trial by jury of less than twelve men with the consent of the accused. — Chapter 348.

Permitting physicians and surgeons to testify in their own behalf, as to information they may have acquired in their professional capacity. — Chapter 322.

Extending the scope of the examination, adverse examinations of witnesses on trial. — Chapter 291.

Prohibiting any person acting as attorney or counsel in a case formerly prosecuted by him as an officer. — Chapter 304.

Amending section 3940 of the statutes, relating to the assignment of estates of decedents. — Chapter 271.

Providing a penalty for non-compliance with the provisions of the discovery statute. — Chapter 232.

Fixing the penalty for the destruction of property by means of explosives from one to fifteen years in the penitentiary. — Chapter 286.

Extending the jurisdiction of the municipal court having concurrent criminal jurisdiction with circuit courts in counties having a population of 250,000 or more to take charge of prisoners placed on probation. — Chapter 269.

Extending the scope of the discovery statute to include the taking of depositions of non-resident plaintiffs or defendants in any county in the state. — Chapter 231.

Prohibiting the examining magistrates from acting as counsel or attorney in any action which shall previously have been determined before him as such examining magistrate. — Chapter 144.

Empowering judges of courts of record to hold in contempt, on proper proceedings, any person who refuses to testify before a board of review after proper summons. — Chapter 140.

Providing a penalty for having in possession burglarious explosives or devices. — Chapter 88.

Relating to the dissolution of corporations and evidence of title to corporate property. — Chapter 65.

Limiting the number of justices of the peace in each town to two and specifying the manner and time of election. — Chapter 72.

Relating to the admissibility of testimony of deceased witnesses or witness absent from state in any retrial or proceeding. — Chapter 65.

Legalizing and validating deeds and other written instruments acknowledged before a register of deeds to the same extent as if they had been acknowledged before a person authorized to take such acknowledgment. — Chapter 24.

Giving justices of the peace exclusive jurisdiction in all cases arising under ordinances and by-laws of villages. — Chapter 23.

Making the maximum penalty for burglary in the night time, ten years. — Chapter 64.

Providing for drawing of jurors in counties having a population of 150,000 and giving circuit judges certain powers therefor. — Chapter 219.

Empowering courts of record having criminal jurisdiction to

employ counsel for indigent persons and fixing compensation therefor. — Chapter 218.

Making county in which commitment is made liable for support of persons committed to jail for failure or refusal to comply with court order respecting payment of alimony. — Chapter 153.

Providing for the parole of minors convicted of misdemeanors and felonies. — Chapter 131.

Defining burglary with explosives and fixing a penalty therefor. — Chapter 89.

Providing for writ of error for state in criminal actions under certain conditions. — Chapter 187.

Relating to comity between states and foreign decrees of divorce. — Chapter 174.

Empowering clerks of circuit courts having 1000 or more actions on the term calendar to arrange such actions according to date or filing of complaint, petition, or other pleadings necessary to commence the action, and making the serial record number of every action its calendar number. — Chapter 212.

Requiring clerks of courts of record in the state to turn over to county treasurer all unclaimed moneys, securities or funds for which no order has been made during four years and requiring county treasurer to turn all such moneys, securities, and funds into county treasury when no legal claim is made for same after due publication providing for waiver of all actions for same after provisions of law have been complied with. — Chapter 209.

Making wages due workingmen, clerks, or servants, which have been earned within three months before date of death of testator or intestate, not to exceed $300 to each claimant, valid claims against estate of deceased. — Chapter 17.

Dividing the civil court of Milwaukee county into branches and providing for the numbering of same. — Chapter 9.

Cities

Empowering common councils to legalize bonds issued or sold by any municipality for the purpose of purchasing or constructing an electric lighting plant, which bonds have been declared illegal subsequent to their issuances. — Chapter 75.

Authorizing cities to accept their own bonds or mortgage certificates from depositors as collateral security and to provide for their cancellation upon default of the depository. — Chapter 130.

Empowering common councils of cities of the first class to extend the time for payment of city taxes for a period of six months. — Chapter 273.

Empowering common councils to change the license fee charged for interurban franchises not oftener than once in five years. — Chapter 274.

Empowering common councils to levy a tax, not to exceed seventeen one-thousandths of a mill upon each dollar of the assessed value of the taxable property of cities for the city civil service fund. — Chapter 95.

Empowering villages and cities, specially incorporated, to condemn land for the construction of sewage disposal plants and mains incident thereto, within or without the limits of the village or city. — Chapter 279.

Creating an art commission for cities of the first class and specifying the membership thereof. — Chapter 318.

Providing a method of determining the necessity of taking lands for public purposes, in cities operating under a special charter. — Chapter 332.

Permitting cities of the second, third and fourth classes to organize under the commission form of government and specifying the manner in which such organization shall be affected. — Chapter 387.

Empowering county boards to fix compensation of the register of deeds and to change the same from a fee to salary system. — Chapter 400.

Permitting cities of third and fourth class through the mayor, clerk and common council, to execute trust deeds or mortgage, to secure the payment of bonds heretofore or hereafter issued by any city for the purchase of electric light or water works plants and the appurtenances of such plants. — Chapter 411.

Creating the office of city forester in cities of the first class and prescribing his powers and duties. — Chapter 408.

Conferring powers of self government on cities and providing for charter conventions. — Chapter 476.

Empowering any city to create by ordinance of its common council, a board of public land commissioners of five members, appointed with powers of converting streets and highways designated by the common council of such city into parkways or boulevards. — Chapter 486.

Authorizing common councils of cities of the first class to license and regulate persons, firms and corporations engaged in the installing, erecting, constructing, or altering of any electrical work in any building, or part of building, in said cities. — Chapter 482.

Permitting tax levy of $\frac{.264}{1000}$ of a mill for library in the city of Milwaukee. — Chapter 109.

Granting certain submerged lands along lake shore of Milwaukee for park and boulevard purposes. — Chapter 198.

Permitting all cities to erect public lavatories and to maintain them by letting out privileges to news venders, etc., or out of the general city fund. — Chapter 19.

Permitting cities of first and second class to fix rates of wharfage. — Chapter 42.

Requiring cities to sprinkle streets when abutting property owners' petition for the same. — Chapter 45.

Prohibiting the establishment of a street in Milwaukee county without securing approval of county board. — Chapter 86.

Permitting tax levy of $\frac{1}{10000}$ of a mill for the public museum in Milwaukee. — Chapter 93.

Permitting special tax levy of $\frac{1}{100}$ of a mill for historical museums in cities of first and second classes. — Chapter 94.

Permitting special tax levy of $\frac{1}{100}$ of a mill for parks and boulevards in Milwaukee. — Chapter 98.

Permitting special tax levy of $\frac{1}{10000}$ of a mill for auditoriums and music halls in Milwaukee. — Chapter 99.

These laws are in general fairly characteristic of the kind passed by a modern state legislature. Some are trivial, but on the whole a certain spirit of advancement is evident all through them. They are but a small part of the legislation passed at this session. Home rule for cities, the commission form of government and many other improvements were provided for. The educational legislation mentioned previously seems to be the beginning of a general overhauling of the whole educational system. Railroads and public utilities also came in for their share.

Ten years ago what an uproar capital would have caused, had such an array of bills been proposed to any legislature, yet no capital has been driven out of this state—in fact everything is advancing with great strides. It is rapidly becoming a manufacturing state. It ranks

seventh in the table showing the amount of corporation taxes collected by the United States government from the various states.

It is an easy thing to say that a state is prosperous, but when hard-headed men in Wall Street admit that a certain state, in which a political agitation to which they are opposed has gone on for many years, is prosperous and when the bonding houses concede that all the stocks and bonds of great financial interests and public utilities of all kinds are upon a sound basis in that state, surely there must be some evidence of it. If we find that failures in the United States have increased about 33⅓ per cent in ten years and have decreased in Wisconsin some 10.8 per cent, that speaks well for a state as advanced in radical legislation as Wisconsin. If we find that the cost of material used in manufacture has increased 52 per cent in four years in a state having no coal, the agitation is not driving capital out of the state. If we find that there have been absolutely no failures of state banks in that state for over ten years and but three national banks went into receivership because of embezzlement during that period, certainly it speaks well not only for the prosperity of the state, but for the safeguarding of the money invested. The clearing house exchanges have increased in the United States about 100 per cent in ten years and in Milwaukee 117 per cent in that time. New construction in gas utilities has increased 22 per cent

in 1910 over that of 1909; in telephones, 14 per cent in the same time; in electric utilities, 145 per cent; in water utilities, 24 per cent; the railroads' gross earnings have increased 21.01 per cent from 1905 to 1909, while all the railroads in America have increased but 16.15 per cent; the railroad mileage of Wisconsin has increased 12 per cent in the same time; the total value of railroads in Wisconsin in six years has increased about $96,000,000; the value of all general property in the state has about doubled in six years. Considering all these facts, we can surely say that the legislation — admittedly some of it experimental — which has been discussed in this book is not of such a nature as to seriously hurt capital. The underlying truth is, that there has been substituted governmental regulation for the darkness of private corporation accounts. We all know that however good security private companies may offer, United States bonds at a lower rate are more certain and safer. This is simply because we are willing to pay for security. The public bookkeeping in Wisconsin whatever it does, insures security. The recent prosperity of the agricultural and dairy interests in Wisconsin (the result of the educational campaign) can scarcely be realized. Wisconsin is now the second dairy state in the union; the yield per acre of grain during the last year has been greater in this state than in any other state. For ten years it has been the great flax producing state in the country; and

excluding the states which require irrigation, the greatest in barley, oats and spring wheat; it is second in the amount of potatoes produced; the number of cows has increased in ten years some 47.7 per cent; in butter production, it has increased 70.4 per cent and in cheese production, 87.7 per cent. Surely the great investment which Wisconsin has made in her educational institutions has returned its original investment many times over in hard dollars and cents.

Granting that this prosperity may not be the result of this legislation, it may be good evidence that the Wisconsin legislature has proceeded with great caution and made its laws only after the most careful scrutiny of the delicate machinery of industry. It may be said that these conditions might have existed if none of these laws had been passed but the fact that prosperity has increased at a rate as great as, if not greater than, any state in the country, is evidence that if *laws are made carefully* and are made to fit into the harmony of industrial conditions, greater advances can be made than by following the wild shouts of reformers who would destroy without constructing.

The state has not suffered from heavy taxation either in the accomplishment of all these things. Wisconsin has no state debt (save money borrowed from its own school fund) and yet is building a $6,000,000 capitol building out of current taxation funds without debt.

Heavy investments for the future which, according to all systems of finance and from every motive of justice, should be carried by a state debt, have been provided for by current taxation. As the direct state tax was remitted for six years there was no direct state tax during that time, the corporations paid it all and the people have been spoiled. Although now the state tax rate is relatively low in comparison with some of the surrounding states, there has been some grumbling as a result of this remittance of a few years ago when no state tax whatever was collected.

The fact is that the greater part of this increase of the cost of government has been caused by state aid to educational enterprises, in many cases chiefly of local importance and by the building of roads and developments by which the locality itself directly benefits. It is gradually being understood by the Wisconsin people that a large investment has been made and as time goes on, a more general satisfaction is evident in regard to the payment of taxes. The people of this state demand efficiency in government and once convinced of its existence they are willingly taxed for it, despite the demagogue who so often makes this his only shibboleth.

There are countries still where taxes are low; Dahomey is one of them. State activity means investment and all the advanced states of the world make heavy investments. Wisconsin taxes are very low in the opin-

ion of the writer, and even a heavier investment should be made to-day either by bonding the state or otherwise, in the development of roads, and forests and in the industrial and agricultural education of the people. It would certainly be worth the investment a hundredfold provided always that efficient machinery prevents waste.

If what has been written has any element of truth in it, if good legislation and prosperity can and do go hand in hand, the result is a monument to the painstaking and toiling way in which the Wisconsin legislature has gone about its task. If the Wisconsin legislation has some elements of solidarity in it, no little of its success may be due to the fact that the cautious, careful German and Norwegian have refused to be domineered by every long-haired reformer who prances into the arena, asking all to "put on the whole armor of God." This type of reformer has been practically unknown in our legislative bodies and, indeed, it is only recently that he has made his appearance at all — then but to receive a very chilly welcome. In the words of the current slang phrase, every Wisconsin legislator "comes from Missouri" and you have to "show him."

Real reformers have yet to learn that they can progress much further if they really build well as they proceed. Many a good business man would welcome certain kinds of legislation if he were convinced that it could be made effective without great distortion of industrial con-

ditions. It is to the advantage both of the reformer and the business man that there should be some attempt to improve our law-making process. A governor of New York once told how his predecessor managed the reformers; he agreed with every one and suggested that the reformers put their ideas in the form of bills which he would support. Four out of five of the reformers never returned, while the fifth one reappeared with a bill so crude in form that the governor could easily point out sections which he could not support because of their unconstitutionality or lack of administrative devices. In Wisconsin, the governor could not use that scheme. The chances are that if a man really had a feasible idea which would be for the general welfare of the state, he would have a hearing before the legislature and his plan would be modified in such a manner that the governor would have a much harder task to criticise it or lightly dispose of it.

The board of public affairs of which there has been casual mention in previous chapters, is a temporary board or commission, composed of some of the ablest men in the state. It deserves some comment at this point because of its relation to future legislation. It has two specific duties to perform; to increase the efficiency of the administration of the state by applying business methods throughout and to investigate the cost of living, the development of the state, the immigration question,

coöperation and credit conditions and, in general, to determine whether a state plan for betterment can be evolved which will make Wisconsin a better state in which to live.

Now there isn't a shrewd, careful man who is not afraid of all this when he hears of it; such plans, from John Locke to the present time, have nearly always failed. The report of the "Recess committee on Irish affairs" under the direction of Sir Horace Plunkett is a brilliant exception. Recognizing these facts, the board is carefully proceeding in its work with the idea of recommending improvements to the legislature which will lay strong foundations for the future.

Wisconsin has ten million acres of unoccupied land. If Australia and New Zealand have dealt with a problem of this kind, why cannot Wisconsin do so? If these lands are good for agricultural purposes but require thirty dollars an acre for development, why cannot a scheme be originated so that the actual settler may have the advantage of some kind of credit, in order to clear his land and use his capital for the greatest benefit? Australia has bought up or condemned great tracts of land and then leased them for 999 years to actual settlers; the settler may use his capital for cattle, machinery and barns and by paying a small lease yearly to the state, improve these lands. Practically the same principle is being applied in the arid regions of the West by our federal

government; is there any great reason why these principles may not be applied here? If lands cannot be developed because of lack of water and the government advances money to supply that deficiency, wherein lies the difference between that aid and the clearing of wild lands of stumps subsidized by the government?' The only thing which lies in the way in either case is capital and long time credit. All history shows that land monopoly combined with a renter class, brings about the worst possible situation for a country. In order to prevent the gradual increase of the renter class, can we not introduce some long time credit arrangement similar to that recently introduced into Ireland, by which the government allows the purchaser to pay for land on a long time basis?

Is all of this socialism? Quite the opposite; it strives to give the individual a better opportunity to possess property — the very antithesis of socialism. Reduction of the cost of living and coöperative schemes of one sort or another are also to be investigated by this commission. With the splendid examples of the work of foreign countries along this line — the great Raffeisen system of coöperative credit in Germany, the Luzzatti banks in Italy, the effective coöperation in agriculture in Denmark — before this committee, are there not possibilities to be utilized, to be tested and tried? Is there not some hope that this committee may institute some plan

whereby there may be increased betterment of conditions in this state, thus setting an example of accomplishment for other states to follow?

America has a great advantage in that our legislation need not be experimental. Germany, Denmark, Australia, New Zealand, Canada and even Ireland and Italy have laws which have outlived the experimental stage and which will be of the greatest service to us in our advance toward the happiness and welfare of all, as well as the more equitable division of the profits coming from the great wealth and strength of our civilization. The small group of socialist Germans in the legislature have well understood that they did not have to advance untried experiments, hence they adopted a policy of continuous education maintaining that certain laws have existed in a certain country and have accomplished certain things and that Wisconsin would eventually have to accept similar laws. The writer well remembers that when the first workmen's compensation bill was introduced nearly eight years ago, the astonished members of the legislature came to him inquiring if such a thing did exist in Germany and England. The fact is, most of the legislation which the socialists have introduced has had nothing to do with socialistic propaganda but in many cases has proposed the very things advocated by thoughtful men in every country of the world save America. It will be remembered that the

socialists in Germany for many years were opposed to the whole plan of industrial insurance and only recently have accepted it. So far does this plan of expediency go, that one time when the writer happened to remark to a socialist member that a proposed plan to extend credit, by means of a well known European device so that workingmen might possess a little property, was not really socialism, the member replied with a smile, "It is an excellent bill and good enough socialism for us."

The socialists are looking abroad and putting forth well tried experiments, mixed in many cases it is true with their peculiar propagandist ideals, which because of their source, excite a blind and unreasoning opposition. If our people would give more study to great economic movements in other lands they would realize this truth.

So marked have been the changes throughout the world and so astonishing the fact that they have actually seemed to have increased prosperity, that the conservative Boston *Transcript* is compelled to remark in a recent editorial on England: —

"Take all together, this makes an astounding program of social improvement, all the more astounding in the fact that it should have been undertaken by the staidest of all governments. This marks a really stupendous innovation in governmental procedure. Our friends, the socialists, have always been ridiculed for their pet claim that it is the business of the government to spread happiness and plenty among the people. Yet here, in a country

the very quickest of all to foam at the very word 'Socialism,' is a string of acts each having as its tacit side-issue the partial redistribution of wealth and the spread of happiness!

"Thus far these measures, too, seem to have worked. The Old-Age Pensions act has undoubtedly mitigated a great deal of want and misery. And the so-called 'revolutionary' budget, of which so much disaster was predicted, has left behind it the unmistakable effect of improved business conditions and greater prosperity. This latter effect may have arisen simply from the ending of a business suspense. Still, a very bad measure would have permitted only a halfway recuperation. On the surface there seems nothing impractical about these ventures of government into the sphere of humanitarianism. There may be later and hidden costs to pay, but they are not now apparent. But the point of all this is the speculation which it warrants.

"May it not be that the time has come for us, after all, to frame slightly larger conceptions of government than we have been holding? Is the chief end of government any longer to be the collection of taxes, the maintenance of order, and the other material duties that have long been held to constitute its entire responsibility? Half unconsciously the men who have framed a network of paternalistic measures in Germany, even wider than that in England, seem to have assumed for government a new moral obligation. And this has been found not to involve any serious disturbances to property and vested rights. Are we perhaps going down a new path? Have these other countries beaten us by a decade to a now old and settled New Nationalism?"

Shall we always as our great Judge Ryan once said, "stand by the roadside and see the procession go by?" Shall we always hear the returning travellers' tale of the

improvements throughout the entire world with a provincial and smug spirit and be foolish enough to believe that we can learn nothing, while right in our midst are problems which have confronted every nation at some time in its history? Shall we always look over the boundary into Canada and wonder at its prosperity, the daring of its lawmakers and the efficiency and economy of its administration? The old cry, "it is unconstitutional" cannot much longer endure with the present American awakening and an analysis must soon be made of the growing strength of these worldwide economic improvements. Shall we always be deceived by the cry of "Socialism" whenever it is necessary to use the state to a greater degree than formerly? Are there not elements and ideas which the socialists have adopted from which it is a far cry indeed to the state ownership of all the instruments of production?

After a careful study of socialism in Germany the writer has come to the conclusion that many of the reforms advocated by that party will eventually lead to the destruction of its main thesis. The individual initiative and the efficiency of the individual caused by the breaking up of class distinctions, the establishment of merit and ability in the place of family or title, the equitable distribution of taxation and the very equality of opportunity resulting, will lead to an individuality which will cause men to press forward in the acquisition

of private property. Those who have seen the land hunger of the American immigrant can well testify to that. Provide the ladder, make free the way and human beings will climb and no plan ever made by Karl Marx or any other man, of whatever party or sect, will prevent the acquisition of private property. The rise of the newly rich class, the evidence of which is seen in the streets of Berlin almost as much as in the streets of New York, proves my thesis. Are there then, issues appropriated by socialism which are really the strength of these movements? Certainly the socialists in the Wisconsin legislature advocate, in the greater part, humane legislation which could be very well advocated by the most bitter opponents of this party and which in many cases has nothing to do with the propaganda of the theory of state ownership. Says Jane Addams:—

"Is it because our modern industrialism is so new that we have been slow to connect it with the poverty all about us? The socialists talk constantly of the relation of economic wrong to destitution, and point out the connection between industrial maladjustment and individual poverty, but the study of social conditions, the obligation to eradicate poverty, cannot belong to one political party nor to one economic school, and after all it was not a socialist, but that ancient friend of the poor, St. Augustine, who said, 'Thou givest bread to the hungry, but better were it, that none hungered and thou had'st none to give to him.'"

Is it good policy or good politics to allow the socialists to become the champions of women in industry, the de-

fender of the child from exploitation, friend of the poor and downtrodden and yet expect to defeat them at the polls in a period characterized by growing humane feeling? Can we wrap in a parcel everything which Christianity has approved since the time of the Great Founder and label it, "Socialism, don't touch"? When it comes to the attainment of any reasonable legislation for the true betterment of human beings, the only way to beat the Socialists "is to beat them to it."

The hardy woodsman, the sturdy American who has battled with the elements, swift rivers and vast forests, may frown at the suggestion of legislation mentioned here. This man in the legislature, powerful in his own strength, frowns upon laws for the limiting of hours of labor for women and children as "un-American." It will be felt by men of this kind (and they have been the sturdy old oaks of American life after all) that there is something very softening in this kind of legislation. Indeed a weakening influence may occasionally creep in but by looking over long periods of time we find that selfishness has always won, so it is not the softening influence that we need to fear but the pauperizing influence, which comes from another kind of paternalism — that of the largess of the great millionnaire or the successful proconsul of ancient Rome. The pages of Gibbon and Ferrero are full of instances which are comparable to actual conditions in our own country to-day.

There is a corrupt influence from large concentration of wealth and its unhappy distribution which will cause more beggarism, more softening and more syncophancy than all the laws which can be put upon the statute books regulating the hours of labor of women and children. Indeed the story of prosperity in every country shows the same picture again and again — pictures which one may find in New York City any time.

Says our great historical student, Professor J. Franklin Jameson: —

"Why do not Americans study more intently the age of the Antonines? There they will find a state of society singularly resembling our own — a world grown prosperous and soft and humane, with long-continued peace and abounding industrial development, a population formed by the mixture of all races, in which the ancient stock still struggles to rule and to assimilate, but is powerless to preserve unimpaired its traditions, a mushroom growth of cities, a universal passion for organization into industrial unions and fraternal orders, a system in which woman has exceptionally full equality with man, a society in which the newly rich occupy the centre of the stage, offending the eye with the vulgar display of brute wealth yet pacifying the mind and heart with the record of numberless and kindly benefactions."

Yet all the causes of the decline of Rome were working in this soil — the results were not long in forthcoming.

In these days of the ocean cable and the fast racers of the sea, waves of public opinion and thought and the struggles of other lands reach us so quickly, that whether

for good or evil, great and sudden changes are emerging from this turmoil. We are encountering but the first wavelets of what appears to be a flood of mighty forces. Will our grand old constitution stand the shock? Will the splendid American spirit and ideals of the past be submerged? The best there is of our sturdy individualism *must* be preserved. In Wisconsin, the wise leaders have foreseen this and are determined to keep intact every bit of the spirit of the men who made the "Iron Brigade" and hence are building slowly and surely the beginnings of a new individualism.

This little book advocates no new philosophy or doctrine; there is no "ism" in this plan. It is simply logical consideration of one thing after another as necessity appears. Every other plan of man, however wise and complete it may have been, has failed. Place before the American people the ideal of Lincoln and search keenly into our conditions to discover why there are not more Lincolns. If in our modern life, conditions are not conducive to the highest type of American manhood, we should attempt to find some way of helping men to help themselves. What is the need of a philosophy or an "ism" when there is obvious wrong to be righted? Whatever has been accomplished in Wisconsin seems to have been based upon this idea of making practice conform to the ideals of justice and right which have been inherited. If the weak ask for justice, the state should

see that they get it certainly, quickly and surely. If certain social classes are forming among us, can we not destroy them by means of education and through hope and encouragement make every man more efficient so that the door of opportunity may always be open before him?

If you were responsible for the business of government, would you not apply the common rules of efficiency, Mr. Business Man? Do you not believe it would pay well to make a heavy investment in hope, health, happiness and justice? Do you not think you would get enormous dividends in national wealth? Isn't there something worth while, something which will pay in the strong ideal of this *New Individualism* of Wisconsin?

APPENDIX

APPENDIX

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INITIATIVE AND REFERENDUM RESOLUTION

Joint Resolution No. 74, Laws of 1911

To amend section 1, of article IV of the constitution, to give to the people the power to propose laws and to enact or reject the same at the polls, and to approve or reject at the polls any act of the legislature; and to create section 3, of article XII of the constitution, providing for the submission of amendments to the constitution upon the petition of the people.

Resolved by the Assembly, the Senate concurring, That section 1, of article IV of the constitution, be amended to read:

Section 1. 1. The legislative power shall be vested in a senate and assembly, but the people reserve to themselves power, as herein provided, to propose laws and to enact or reject the same at the polls, independent of the legislature, and to approve or reject at the polls any law or any part of any law enacted by the legislature. The limitations expressed in the constitution on the power of the legislature to enact laws, shall be deemed limitations on the power of the people to enact laws.

2. (*a*) Any senator or member of the assembly may introduce, by presenting to the chief clerk in the house of which he is a member, in open session, at any time during any session of the legislature, any bill or any amendment to any such bill; provided, that

the time for so introducing a bill may be limited by rule to not less than thirty legislative days.

(*b*) The chief clerk shall make a record of such bill and every amendment offered thereto and have the same printed.

3. A proposed law shall be recited in full in the petition, and shall consist of a bill which has been introduced in the legislature during the first thirty legislative days of the session, as so introduced; or, at the option of the petitioners, there may be incorporated in said bill any amendment or amendments introduced in the legislature. Such bill and amendments shall be referred to by number in the petition. Upon petition filed not later than four months before the next general election, such proposed law shall be submitted to a vote of the people, and shall become a law if it is approved by a majority of the electors voting thereon, and shall take effect and be in force from and after thirty days after the election at which it is approved.

4. (*a*) No law enacted by the legislature, except an emergency law, shall take effect before ninety days after its passage and publication. If within said ninety days there shall have been filed a petition to submit to a vote of the people such law or any part thereof, such law or such part thereof shall not take effect until thirty days after its approval by a majority of the qualified electors voting thereon.

(*b*) An emergency law shall remain in force, notwithstanding such petition, but shall stand repealed thirty days after being rejected by a majority of the qualified electors voting thereon.

(*c*) An emergency law shall be any law declared by the legislature to be necessary for any immediate purpose by a two-thirds vote of the members of each house voting thereon, entered on their journals by the yeas and nays. No law making any appropriation for maintaining the state government or maintaining or aiding

any public institution, not exceeding the next previous appropriation for the same purpose, shall be subject to rejection or repeal under this section. The increase in any such appropriation shall only take effect as in case of other laws, and such increase, or any part thereof, specified in the petition may be referred to a vote of the people upon petition.

5. If measures which conflict with each other in any of their essential provisions are submitted at the same election, only the measure receiving the highest number of votes shall stand as the enactment of the people.

6. The petition shall be filed with the secretary of state and shall be sufficient to require the submission by him of a measure to the people when signed by eight per cent of the qualified electors calculated upon the whole number of votes cast for governor at the last preceding election, of whom not more than one-half shall be residents of any one county.

7. The vote upon measures referred to the people shall be taken at the next election occurring not less than four months after the filing of the petition, and held generally throughout the state pursuant to law or specially called by the governor.

8. The legislature shall provide for furnishing electors the text of all measures to be voted upon by the people.

9. Except that measures specifically affecting a subdivision of the state may be submitted to the people of that subdivision, the legislature shall submit measures to the people only as required by the constitution.

BE IT FURTHER RESOLVED by the assembly, the senate concurring, That article XII of the constitution, be amended by creating a new section to read: —

SECTION 3. 1. (*a*) Any senator or member of the assembly may introduce, by presenting to the chief clerk in the house in

which he is a member, in open session, at any time during any session of the legislature, any proposed amendment to the constitution or any amendment to any such proposed amendment to the constitution; provided, that the time for so introducing a proposed amendment to the constitution may be limited by rule to not less than thirty legislative days.

(*b*) The chief clerk shall make a record of such proposed amendments to the constitution and any amendment thereto and have the same printed.

2. Any proposed amendment to the constitution shall be recited in full in the petition and shall consist of an amendment which has been introduced in the legislature during the first thirty legislative days, as so introduced, or, at the option of the petitioners, there may be incorporated therein any amendment or amendments thereto introduced in the legislature. Such amendment to the constitution and amendments thereto shall be referred to by number in the petition. Upon petition filed not later than four months before the next general election, such proposed amendment shall be submitted to the people.

3. The petition shall be filed with the secretary of state and shall be sufficient to require the submission by him of a proposed amendment to the constitution to the people when signed by ten per cent of the qualified electors, calculated upon the whole number of votes cast for governor at the last preceding election of whom not more than one-half shall be residents of any one county.

4. Any proposed amendment or amendments to this constitution, agreed to by a majority of the members elected to each of the two houses of the legislature, shall be entered on their journals with the yeas and nays taken thereon, and be submitted to the people by the secretary of state upon petition filed with him signed by five per cent of the qualified electors, calculated upon the whole

number of votes cast for governor at the last preceding election of whom not more than one-half shall be residents of any one county.

5. The legislature shall provide for furnishing the electors the text of all amendments to the constitution to be voted upon by the people.

6. If the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the constitution, from and after the election at which approved; provided, that if more than one amendment be submitted they shall be submitted in such manner that the people may vote for or against such amendments separately.

7. If proposed amendments to the constitution which conflict with each other in any of their essential provisions are submitted at the same election, only the proposed amendment receiving the highest number of votes shall become a part of the constitution.

MEN SERVING BOTH UNIVERSITY AND STATE FOR 1910–1911

A. MEN WHO RECEIVE COMPENSATION BOTH FROM UNIVERSITY AND STATE

1. DEFINITE COMBINATION ARRANGEMENT

E. A. BIRGE. Dean of the college of letters and science; Superintendent of the geological and natural history survey. (Also serves as member of Fish commission, Forestry commission, Conservation commission.)

C. F. BURGESS. Professor of chemical engineering; on engineering staff Railroad and Tax commissions.

R. FISCHER. Professor of chemistry; Dairy and food commission.

C. JUDAY. Lecturer in zoölogy; Biologist, Geological and natural history survey.

J. G. D. MACK. Professor of machine design; on engineering staff Railroad and Tax commissions.

W. D. PENCE. Professor of railway engineering; engineer Railroad and Tax commissions.

R. G. THWAITES. Secretary Wisconsin historical society; Wisconsin free library commission; Lecturer in history.

2. NO DEFINITE COMBINATION ARRANGEMENT

G. H. BENKENDORF. Assistant professor of dairy husbandry; Secretary Wisconsin buttermakers' association.

C. G. BURRITT. Instructor in railway engineering; on engineering staff Railroad and Tax commissions.

J. A. CUTLER. Instructor in topographical engineering. Fifteen hours per week assistance on Mr. Stewart's report on storage reservoirs.

M. J. KERSCHENSTEINER. Assistant in business administration; Tax commission.

O. L. KOWALKE. Instructor in chemical engineering; on Engineering staff Railroad and Tax commissions. (He has also made numerous tests of coals and fuels for various state institutions.)

R. A. MOORE. Professor of agronomy; Secretary experiment association.

W. A. SCOTT. Professor of political economy; Director course in commerce; State teachers' examiner.

H. J. THORKELSON. Associate professor of steam engineering; on engineering staff Railroad and Tax commissions; Engineer for state board of control.

J. S. VOSSKUEHLER. Assistant professor of machine design; on engineering staff Railroad and Tax commissions. Discontinued by resignation at end of first semester, 1910–1911.

B. MEN WHO RECEIVE COMPENSATION FROM UNIVERSITY SERVING ON STATE COMMISSIONS, ETC., WITHOUT COMPENSATION FROM THE STATE

J. G. HALPIN. Assistant professor of poultry husbandry; Secretary of Wisconsin poultry association.

E. G. HASTINGS. Associate professor of agricultural bacteriology; ex-officio member of the State live stock sanitary board, as Bacteriologist of the agricultural college.

G. C. HUMPHREY. Professor of animal husbandry; ex-officio member of Wisconsin live stock breeder's association, as Chairman of department of animal husbandry.

L. KAHLENBERG. Director of course in chemistry; Professor of chemistry; Member of the Geological and natural history survey.

G. MCKERROW. Superintendent of farmers' institutes; Member of live stock sanitary board, board of agriculture.

H. L. RUSSELL. Dean of college of agriculture; Director of agricultural experiment station; ex-officio member of the State board of forestry; President of the advisory board Wisconsin state tuberculosis sanatorium; ex-officio member of State board of immigration.

J. G. SANDERS. Assistant professor of economic entomology; Chief orchard and nursery inspector, appointed by the governor. (Fees for Nursery licenses go to University.)

L. S. SMITH. Associate professor of topographical and geodetic engineering; State sealer of weights and measures. (Has also assisted the legislature relative to this matter.)

A. L. STONE. Professor of agronomy; in charge of Seed inspection service as authorized by legislative act. (All fees collected for analytical work go directly into the state treasury, but Stone receives no compensation for his work.)

F. E. TURNEAURE. Dean of the college of engineering; Member of the Wisconsin highway commission, and the Wisconsin commission of industrial education. (Has also rendered some assistance to the Legislative committee on water power.)

C. R. VAN HISE. President of university; Member of forestry commission; Free library commission, President Geological and natural history survey; Chairman Conservation commission.

GEORGE WAGNER. Assistant professor of zoölogy; work on Geological and natural history survey.

A. R. WHITSON. Professor of soils; in charge of Soil survey, for the Wisconsin Geological and natural history survey.

The preceding men have definite official positions. Without such definite positions a large number of men serve the state bureaus in various ways as called upon. Among them are the following: —

J. R. COMMONS. Professor of political economy.

E. C. ELLIOTT. Director of course for training of teachers.

E. A. GILMORE. Professor of law.

F. T. HAVARD. Assistant professor of mining engineering; research work relative to the quality of clays in the state, at request of Wisconsin brick manufacturers' association.

A. B. HALL. Instructor in political science.

CHESTER LLOYD JONES. Associate professor of political science.

H. L. McBAIN. Associate professor of political science.

D. W. MEAD. Professor of hydraulic and sanitary engineering. Spent several days during the past year before legislative committees and is at present in charge of the reconstruction work at Black River Falls.

W. U. MOORE. Professor of law.

M. P. RAVENEL. Professor of bacteriology; Director hygienic laboratory.

P. S. REINSCH. Professor of political science.

H. S. RICHARDS. Dean of law school; Professor of law.

E. A. ROSS. Professor of sociology.

Various members of the medical staff.

C. MEN WITH COMPENSATION FROM STATE SERVING ON UNIVERSITY STAFF WITHOUT COMPENSATION

T. S. ADAMS. Tax commissioner; Professor of political economy.

M. S. DUDGEON. Secretary free library commission; Instructor in political science.

E. M. GRIFFITH. State forester; Lecturer in forestry.

CHARLES McCARTHY. Librarian legislative reference department; Lecturer in political science.

INDEX

Addams, Jane, on social improvement, 299.
Administration, science of, 186.
Agricultural education, 126.
Agriculture, college of, *see* Wisconsin university, college of agriculture, 126.
Agriculture, county schools of, *see* County schools of agriculture, 126.
Appointive offices, 172.
Apprenticeship, 142.
Appropriations, continuing, 203.
  continuing for commissions, 40.
  procedure relative to, in legislature, 201.
Armstrong committee, 227.
Attorney general, limitations of powers of, 240.
Australian ballot, 123.

Bankers' mutual insurance companies for protection of depositors, 78.
Banking law, 87.
Bascom, John, influence of, 21.
Bills, introduction of, in legislature, 229.
  rules for drafting in legislative reference department, 197.
Board of public affairs, *see* Public affairs, state board of.
Bonaparte, Charles, on judges as law makers, 238.
Bookkeeping, public, 46.
Boston Transcript, editorial on social improvement, 296.
Budget, 201.

Campaign expenses, 101.
Civil service, 174, 190.
  exemption from, 176.
College of agriculture, *see* Wisconsin university, college of agriculture.
Commerce court, 235.
Commissions, appointive, 45, 172.
  dangers of, 179.
  devices used in, 45.
Common schools, tax for, 86.
Comparative legislation, 216, 248.
Competition, 1.
Conservation, 153.
Constitution, state, 208.
Constitutional amendments, 274.
  initiative applied to, 118.
Constitutionality of laws, power of courts to pass upon, 208.
Contract, right of, 2.
Corporations, abuses of, against individuals, 47.
  inability of individual to contend with, 46.
Corrupt practices, 100.
  procedure, 106.
Cost of service, 59.
County schools of agriculture, 126.

Courts, assumption of legislative power by, 267.
inability to handle economic cases, 235.
power to pass on constitutionality of laws, 208.
procedure in, 239.
Criminal procedure, 253.

Decisions of judges, *see* Judicial decisions, recall.
Delegates to national convention, primary election of, 93.
Depreciation, 61.
Direct election of United States senators, 122.

Efficiency, 192.
Ekern, H. L., on advance in insurance legislation, 73.
Elections, limitation of expenditure of money to secure, 101.
non-partisan in cities, 123.
offences, 100.
United States senators, 122.
Electric light companies, taxation of, 82.
Ely, R. T., on inability of small city to contend with corporations, 47.
on trusts, 5.
teachings of, 27.
Employers' liability, 156, 165.
Equitable Life Assurance Society of New York, withdrawal of, from Wisconsin, 75.
Experts, trained, on commissions, 46.
wrong type of, 188.
Extension division of the university, *see* Wisconsin university, extension division.

Fire insurance, investigation on, 80.
state fund to provide for loss on state property, 79.
Food, pure, 171.
Forestry, 153.
Fraternal insurance, 76.
Freight line companies, taxation of, 82.
Freund, Ernst, on legislation and jurisprudence, 242, 247.

Germans in Wisconsin, 20.
Germany, development of legislation in, 24.
influence of scholars upon legislation in, 186.
Going value, 59.
Government insurance, *see* State insurance.
Granger movement in Wisconsin, 37.
Guarantee of bank deposits, 76.

Hall, A. R., early advocate of *ad valorem* taxation of railroads, 38.
Hatton, W. H., on plans for railroad commission law, 41.
on relation of municipalities and public utilities, 69.
Health and public welfare, 156.
Health, board of, 170.
in relation to state hygienic laboratory, 170.
Hearings before committees of the legislature, 199.
Heating and power companies, taxation of, 82.
Home rule, 66.
Hornblower, Judge, on difficulties of law making, 209.

Ihering, Rudolph von, on the struggle for law, 266.
Illiterates, 142.
Income tax, 83.
Indeterminate permits, 61, 64.
Individual, cases showing abuses of corporation against, 49.
diagram showing inability to contend with corporations, 47.
Industrial commission, 162.
Industrial education, 127, 141.
Industrial insurance, *see* Workmen's compensation.
Industrial liberty, doctrine of, in the United States, 25.
Initiative, *see* Referendum.
Insurance, commissioner, an appointive officer, 79.
regulation, 73.

Jameson, J. F., on dangers of prosperity, 301.
Judge-made law, *see* Law, judge-made.
Judges, 233, 255.
primary election law does not apply to, 92.
recall of, 122, 255, 269.
Judicial decisions, recall, 122, 255, 269.

Laissez faire, doctrine of, 25.
Law, how actually made, 218.
judge-made, 221, 233.
power of courts to pass upon constitutionality of, 208.
revisor of statutes to codify, 208.
Law schools, faulty instruction of, 238, 253.
Legislation, no delegation of, to railroad commission, 45.
in Wisconsin, influence of German ideas and ideals upon, 26.
Legislative reference department, 196, 214.
non-partisanship essential, 218.
Legislature, 194.
commissions appointed by, 170.
hearings before committees of, 199.
length of sessions of, 206.
notable legislation of, in 1911, 274.
Libraries, traveling, 152.
Lush, C. K., on second choice, 93.

Majority elections, *see* Second choice.
Marshall, Judge, on work of the courts, 263.
Mileage books, regulation of, 41.
Monopoly, 1.
Municipal ownership, 65, 67.
Municipalities, public utilities in relation to, 69.
Mutual employers' liability insurance companies, 76.
Mutual life insurance companies, 76.

Normal schools, tax for, 86.
Norwegians in Wisconsin, 20.

O'Reilly, J. B., on relation of wealth and poverty, 7.

Passes, regulation of, 41.
Physical connection of telephones, *see* Telephones, physical connection of.
Physical valuation, 59.
Political purposes, limitation of expenditure of money for, 101.
Potter law, 37.

Presidential preference, provision made for statement of, in primary election law, 93, 98.
Primary election law, 88.
Public affairs, state board of, 202, 253, 292.
Public utilities, act, 58.
home rule, 65.
increase of business of, under law, 286.
indeterminate permits, 61, 64.
opinion of Judge Marshall concerning validity of the Wisconsin act, 62.
physical valuation of, 59.
taxation of, 82.
use of uniform accounting in fixing rates in, 60.

Railroad commission, control of public utilities vested in, 58.
no delegation of legislation to, 45.
power of, to contend with corporations, 44.
elected, 38.
Railroads, early abuses of, in Wisconsin, 34.
physical valuation of, 59.
Potter law, 37.
rates, power to fix, vested in commission, 45.
regulation of, 34.
restrictive legislation, 38.
taxation of, 82.
Recall, 122.
Referendum, joint resolution for constitutional amendment concerning, 116, 309.
Oregon plan of, 116.
Refrigerator lines, regulation of, 41.
Roads, legislation concerning, 154.
Roemer, J. H., on work of the railroad commission, 59.
Ross, E. A., on precedent in law, 237.

Salaries, proper, for experts, 184.
Sanborn, A. W., on corrupt practices, 102.
Scandinavians, influence upon Wisconsin legislation, 29.
Second choice, 93.
Shippers, small, inability of, to contend with corporations, 46.
Sidings, regulation of, 41.
Sleeping car companies, taxation of, 82.
regulation of, 41.
Smith, H. L., on difficulty of interpretation of the law, 211.
Socialism, 299.
State insurance, 76.
fund to provide for fire loss on state and county property, 79.
State superintendent of public instruction, primary election law does not apply to, 92.
Statutes, revisor of, 201.
Stickney, A. B., on early railroad history in Wisconsin, 35.
Stock watering in Wisconsin, 74.
Stocks and bonds, regulation of, 59, 71.
Street railways, companies, taxation of, 82.
law to regulate, 59.
placed under railway commission, 58.
Supreme court, limitation of power of, 240.
Switching, regulation of, 41.

Tax commission, 80.
Taxation of public utilities, 82.
Telegraph companies, placed under railway commission, 58.
taxation of, 82.
Telephones, physical connection of, 58.
Terminals, regulation of, 41.
Transportation and despatch companies, regulation of, 41.
Trusts, 1.
Tuberculosis, prevention of, 171.
Turner, E. J., on relation between university and state, 124, 139.

Uniform accounting, use of, in fixing rates, 60.
United States senators, direct election of, 122.

Water power law, declared unconstitutional, 273.
Wisconsin free library commission, legislative reference department, 197, 214.
traveling library department, 152.
Wisconsin legislature, *see* Legislature.
Wisconsin university, 124.
college of agriculture, 125.
continuing appropriations, 125.
criticisms of, 136.
extension division of, 127, 131, 143.
relation between state and, 136.
tax for, 86.
under what auspices founded, 20.
Workmen's compensation, 156, 164.
decision of Wisconsin court in law of, 256.
English form of, 160.
German form of, 160, 167.

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